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

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I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. AUBRY, LENTOL, STIRPE, HYER-SPENCER, ALESSI, EDDINGTON, KOON, SPANO, REILLY, RAMOS, TITONE, CUSICK, DelMONTE, DESTITO, GABRYSZAK, GORDON -- read once and referred to the Committee on 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:

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

(F) IF THE SEX OFFENDER HAS BEEN GIVEN A LEVEL 2 OR 3 DESIGNATION AND STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WHETHER SUCH OFFENDER IS SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE.

S 2. Section 168-b of the correction law is amended by adding a new subdivision 12 to read as follows:

12. THE DIVISION, UPON INITIAL REGISTRATION AND THEREAFTER IN ANNUAL CORRESPONDENCE AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, SHALL ADVISE EACH SEX OFFENDER WHO IS SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, CONCERNING THE TERM'S SPECIFIC DURATION AND THE ACCURATE TERMINATION DATE OF SUCH RESTRICTION.

S 3. Subdivisions 2 and 3 of section 168-d of the correction law, subdivision 2 as amended by chapter 684 of the laws of 2005 and subdivision 3 as amended by chapter 11 of the laws of 2002, are amended to read as follows:

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

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2. Any sex offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such sex offender shall register with the division on a form prepared by the division. The court shall require the sex offender to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the sex offender expects to reside upon his or her 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 court shall give one copy of the form to the sex offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the sex offender of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. IF YOU ARE CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the court shall determine whether the offender is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. Where the court orders a sex offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such sex offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

3. For sex offenders released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine

the level of notification pursuant to subdivision six of section one hundred sixty-eight-l 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 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least fifteen days prior to the determination proceeding, the district attorney shall provide to the court and the sex offender a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from any state or local facility, hospital, 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.

S 4. 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 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 case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-l 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-l 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 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W 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 established in subdivision five of section one hundred sixty-eight-l of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l 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 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. IF YOU ARE CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail to appear at this proceeding, without sufficient

excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. It shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l 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 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED BY SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, 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 recommendation and any material submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. If available, facts proven at trial or elicited at the time 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.

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

5-A. THE BOARD SHALL DEVELOP GUIDELINES AND PROCEDURES TO ASSESS WHETHER TO RECOMMEND THAT A SEX OFFENDER WHO STANDS CONVICTED OF A FELONY SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. SUCH GUIDELINES SHALL INCLUDE THE FOLLOWING:

(A) WHETHER A RESIDENCY RESTRICTION WOULD ADVERSELY IMPACT THE OFFENDER'S SUCCESSFUL REENTRY AND REINTEGRATION INTO SOCIETY;

(B) WHETHER A RESIDENCY RESTRICTION IS NECESSARY, BASED ON THE OFFENDER'S CURRENT BEHAVIOR AND PRESENT AND PROSPECTIVE LIVING ARRANGEMENTS TO PROTECT PUBLIC SAFETY;

(C) THE ABILITY OF THE OFFENDER TO OBTAIN PERMANENT AND STABLE HOUSING IN ORDER TO REDUCE THE LIKELIHOOD THAT THE OFFENDER WILL BE TRANSIENT;

(D) THE ACCESSIBILITY TO SUPPORTIVE SERVICES, INCLUDING, BUT NOT LIMITED TO, LOCALLY AVAILABLE SEX OFFENDER TREATMENT PROGRAMS THAT HAVE DEMONSTRATED EFFECTIVENESS IN REDUCING SEX OFFENDER RECIDIVISM AND INCREASING PUBLIC SAFETY;

(E) THE ABILITY OF THE OFFENDER TO FIND GAINFUL AND STABLE EMPLOYMENT; AND

(F) WHETHER THE OFFENSE THAT REQUIRES THE OFFENDER TO REGISTER PURSUANT TO THIS ARTICLE WAS COMMITTED AGAINST A MINOR CHILD.

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

Applying [these] THE guidelines ESTABLISHED IN SUBDIVISION FIVE OF THIS SECTION, the board shall within sixty calendar days prior to the discharge, parole, release to post-release supervision or release of a sex offender make a recommendation which shall be confidential and shall not be available for public inspection, to the sentencing court as to whether such sex offender warrants the designation of sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. In addition, the guidelines ESTABLISHED IN SUBDIVISION FIVE OF THIS SECTION shall be applied by the board to make a recommendation to the sentencing court which shall be confidential and shall not be available for public inspection, providing for one of the [following] three levels of notification DESCRIBED IN PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION depending upon the degree of the risk of re-offense by the sex offender. FURTHER, WHEN THE BOARD MAKES A RECOMMENDATION TO THE SENTENCING COURT THAT A SEX OFFENDER BE CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER AND SUCH OFFENDER STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, THE BOARD SHALL ALSO APPLY THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF THIS SECTION AND MAY MAKE A RECOMMENDATION REGARDING WHETHER SUCH OFFENDER SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE.

S 7. Subdivision 7 of section 168-l of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

7. Upon request by the court, pursuant to section one hundred sixty-eight-o of this article, the board shall provide an updated report pertaining to the sex offender petitioning for relief of the duty to register [or], for a modification of his or her level of notification OR FOR MODIFICATION OR TERMINATION OF A RESIDENCY RESTRICTION IMPOSED BY THE SENTENCING COURT.

S 8. Subdivisions 2 and 3 of section 168-n of the correction law, subdivision 2 as amended by chapter 453 of the laws of 1999 and subdivision 3 as amended by chapter 684 of the laws of 2005, are amended to read as follows:

2. In addition, applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, the sentencing court shall also make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article. [Both] FURTHER, WHEN THE COURT CLASSIFIES A SEX OFFENDER AS A LEVEL 2 OR LEVEL 3 OFFENDER AND SUCH OFFENDER STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE AND THE BOARD HAS RECOMMENDED THAT SUCH OFFENDER BE SUBJECT TO A RESIDENCY RESTRICTION, THE COURT SHALL APPLY THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE AND MAKE A DETERMINATION WITH RESPECT TO WHETHER SUCH OFFENDER SHALL BE SUBJECT TO A RESIDENCY RESTRICTION IN ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. ALL determinations of the sentencing court PURSUANT TO THIS SECTION shall be made thirty calendar days prior to discharge, parole or release.

3. No later than thirty days prior to the board's recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. Upon receipt of the board's recommendation, the sentencing court shall determine whether the sex offender was previously found to be eligible for assigned counsel in the underlying case. Where such a finding was previously made, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. At least twenty days prior to the determination proceeding, the sentencing court shall notify the district attorney, the sex offender and the sex offender's counsel, in writing, of the date of the determination proceeding and shall also provide the district attorney, the sex offender and the sex offender's counsel with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. IF YOU ARE CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The written notice

to the sex offender shall also advise the offender that he or she has a right to a hearing prior to the court's determination, and that he or she has the right to be represented by counsel at the hearing. If counsel has been assigned to represent the offender at the determination proceeding, the notice shall also provide the name, address and telephone number of the assigned counsel. Where counsel has not been assigned, the notice shall advise the sex offender that counsel will be appointed if he or she is financially unable to retain counsel, and a returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, 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 recommendation and any materials submitted by the board, and 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.

S 9. The section heading of section 168-o of the correction law, as amended by chapter 453 of the laws of 1999, is amended and a new subdivision 2-a is added to read as follows:

Petition for relief or modification OF LEVEL OF NOTIFICATION AND/OR RESIDENCY RESTRICTION.

2-A. ANY SEX OFFENDER SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO THIS ARTICLE MAY PETITION THE COURT WHICH IMPOSED SUCH RESTRICTION FOR AN ORDER TERMINATING OR MODIFYING SUCH RESIDENCY RESTRICTION. THE PETITION SHALL SET FORTH THE REASONS FOR SEEKING SUCH MODIFICATION OR TERMINATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING THE FACTS SUPPORTING THE REQUESTED MODIFICATION OR TERMINATION BY CLEAR AND CONVINCING EVIDENCE. SUCH A PETITION SHALL NOT BE CONSIDERED MORE THAN ANNUALLY. THE DISTRICT ATTORNEY AND THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM AN ORDER ISSUED UNDER THIS SUBDIVISION 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.

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

3-A. PRIOR TO THE EXPIRATION OF A RESIDENCY RESTRICTION ORDERED PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, THE DISTRICT ATTORNEY MAY FILE A PETITION WITH THE SENTENCING COURT OR WITH THE COURT WHICH ORDERED THE RESIDENCY RESTRICTION TO EXTEND THE DURATION OF SUCH RESIDENCY RESTRICTION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. THE PETITION SHALL SET FORTH THE REASONS FOR SEEKING TO EXTEND THE DURATION OF SUCH RESIDENCY RESTRICTION. THE DISTRICT ATTORNEY SHALL BEAR THE BURDEN OF PROVING NEW FACTS AND CIRCUMSTANCES THAT WARRANT THE REQUESTED EXTENSION, 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 11. Subdivision 4 of section 168-o of the correction law, as added by chapter 453 of the laws of 1999, is amended to read as follows:

4. Upon receipt of a petition submitted pursuant to subdivision one, two [or], TWO-A, three, OR THREE-A of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the sex offender and shall provide a copy of the petition to the other party. The court shall also advise the sex offender that he or she has the right to be represented by counsel at the hearing and counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated recommendation the board shall notify the sex offender and his or her counsel that the offender's case is under review and he or she is permitted to submit to the board any information relevant to the review. The board's updated recommendation on the sex offender shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a

sex offender, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the sex offender, the sex offender's counsel and the district attorney and notify 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.

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

S 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.

S 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:

S 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.

3. THE COURT SHALL DETERMINE THE DURATION OF THE RESIDENCY RESTRICTION IMPOSED PURSUANT TO THIS SECTION PROVIDED, HOWEVER, THAT SUCH RESTRICTION SHALL NOT APPLY FOR MORE THAN TEN YEARS AFTER THE LATER OF THE OFFENDER'S RELEASE FROM JAIL OR PRISON OR THE PERIOD OR TERM OF PROBATION, PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION FOR THE OFFENSE WHICH REQUIRES THE OFFENDER TO REGISTER AS A SEX OFFENDER PURSUANT TO THIS ARTICLE. IN CALCULATING THE DURATION OF THE RESIDENCY RESTRICTION, ANY PERIOD OF TIME DURING WHICH THE OFFENDER IS INCARCERATED FOR ANY REASON AFTER SUCH RESIDENCY RESTRICTION IS ORDERED SHALL BE EXCLUDED AND THE DURATION OF THE RESTRICTION SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME OF SUCH INCARCERATION.

4. WHERE THE COURT HAS GRANTED A PETITION TO EXTEND THE DURATION OF A RESIDENCY RESTRICTION PURSUANT TO SUBDIVISIONS THREE-A AND FOUR OF SECTION ONE HUNDRED SIXTY-EIGHT-O OF THIS ARTICLE, SUCH EXTENSION MAY BE FOR A PERIOD OF UP TO FIVE YEARS.

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

(a) When imposing a sentence of probation or conditional discharge upon a person convicted of an offense defined in article one hundred thirty, two hundred thirty-five or two hundred sixty-three of this chapter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section [168-l] ONE HUNDRED SIXTY-EIGHT-L of the correction law, the court shall require, as a mandatory condition of such sentence, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in PARAGRAPH (A) OF subdivision fourteen of section 220.00 of this chapter, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her probation officer or the court and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for the limited purposes authorized by the probation officer or the court and superintendent or chief officer. Nothing in this subdivision shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender.

S 15. Subdivision 14 of section 259-c of the executive law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

14. notwithstanding any other provision of law to the contrary, where a person serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law, is released on parole or conditionally released

pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in PARAGRAPH (A) OF subdivision fourteen of section 220.00 of the penal law, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her parole officer and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for the limited purposes authorized by the parole officer and superintendent or chief officer. Nothing in this subdivision shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender.

S 16. The opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law, as amended by chapter 215 of the laws of 2006, is amended to read as follows:

Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such conviction, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed five years from the date of such conviction; or in the case of a conviction for any other offense, shall not exceed two years from the date of conviction, PROVIDED, HOWEVER, THAT IN THE CASE OF A CONVICTION FOR AN OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, AND THE VICTIM OF SUCH OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, THE DURATION OF AN ORDER OF PROTECTION ISSUED PURSUANT TO THIS SUBDIVISION MAY BE, BUT SHALL NOT EXCEED, THE GREATER OF THE APPLICABLE DURATION PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS SUBDIVISION OR UNTIL THE VICTIM OF SUCH OFFENSE ATTAINS THE AGE OF EIGHTEEN. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

S 17. The opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law, as amended by chapter 384 of the laws of 2001, is amended to read as follows:

Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court

shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such conviction, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such conviction; or in the case of a conviction for any other offense, shall not exceed one year from the date of conviction, PROVIDED, HOWEVER, THAT IN THE CASE OF A CONVICTION FOR AN OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, AND THE VICTIM OF SUCH OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, THE DURATION OF AN ORDER OF PROTECTION ISSUED PURSUANT TO THIS SUBDIVISION MAY BE, BUT SHALL NOT EXCEED, THE GREATER OF THE APPLICABLE DURATION PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS SUBDIVISION OR UNTIL THE VICTIM OF SUCH OFFENSE ATTAINS THE AGE OF EIGHTEEN. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

S 18. No municipal corporation, as defined in section 2 of the general municipal law, shall, on or after the effective date of the chapter of the laws of 2009 that created this section, enact any local law, ordinance, code, rule or regulation requiring a sex offender, as such term is defined by section 168-a of the correction law, to comply with a residency restriction. The provisions of this act shall invalidate and preempt any such local law, ordinance, code, rule or regulation enacted after the effective date of the chapter of the laws of 2009 that added this section.

S 19. The provisions of this act shall preempt and invalidate any local law, ordinance, code, rule or regulation enacted before the effective date of the chapter of the laws of 2009 that added this section requiring a sex offender, as such term is defined by section 168-a of the correction law, to comply with a residency restriction, except that nothing in this act shall preclude any local probation department from enforcing any lawful condition of probation that may be imposed on a sentenced offender.

S 20. The district attorney may file a petition to seek the imposition of a residency restriction for: (i) a sex offender classified as a level 2 or 3 offender who stands convicted of a felony which requires registration pursuant to article 6-C of the correction law and who is at liberty on the effective date of this act; and (ii) a sex offender who was convicted of a felony which requires registration pursuant to article 6-C of the correction law prior to the effective date of this act and is incarcerated in a state or local correctional facility on the effective date of this act and is classified as a level 2 or 3 offender. A petition filed pursuant to paragraph (i) of this section shall be filed with the sentencing court or the court which made the determination regarding the level of notification of such offender within one year of the effective date of this act. A petition filed pursuant to paragraph (ii) of this section shall be filed with the sentencing court or the court which made the determination regarding the level of notification of such offender within one year of the release of such offender from incarceration. The petition shall set forth the reasons for seeking

the residency restriction and the district attorney shall bear the burden, by clear and convincing evidence, of proving the facts supporting the imposition of a residency restriction. Upon receipt of a petition submitted pursuant to this section, the court shall proceed in a manner consistent with subdivision 4 of section 168-o of the correction law. Applying the guidelines established in subdivision 5-a of section 168-1 of the correction law, the court shall determine whether to impose a residency restriction on the offender named in the petition pursuant to section 168-w of the correction law. 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 55, 56 and 57 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 21. This act shall take effect immediately, provided that the amendments to the opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law made by section sixteen of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section seventeen of this act shall take effect.