

1336

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. SKELOS -- 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 requiring sex offenders to register for life and petitions for modification; and to repeal subdivision 2 of section 168-h of such law relating to the duration of registration and verification of certain sex offenders

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

1 Section 1. Subdivision 1 of section 168-h of the correction law, as
2 amended by chapter 1 of the laws of 2006, is amended to read as follows:
3 1. The duration of registration and verification for a sex offender
4 [who has not been designated a sexual predator, or a sexually violent
5 offender, or a predicate sex offender, and who is classified as a level
6 one risk, or who has not yet received a risk level classification,]
7 shall be annually for [a period of twenty years from the initial date of
8 registration] LIFE.
9 S 2. Subdivision 2 of section 168-h of the correction law is REPEALED.
10 S 3. Section 168-o of the correction law, as amended by chapter 453 of
11 the laws of 1999, subdivision 1 as amended by chapter 1 of the laws of
12 2006, subdivisions 2 and 3 as amended by chapter 11 of the laws of 2002,
13 is amended to read as follows:
14 S 168-o. Petition for [relief or] modification. 1. [Any sex offender
15 who is classified as a level two risk, and who has not been designated a
16 sexual predator, or a sexually violent offender, or a predicate sex
17 offender, who is required to register or verify pursuant to this article
18 and who has been registered for a minimum period of thirty years may be
19 relieved of any further duty to register upon the granting of a petition
20 for relief by the sentencing court or by the court which made the deter-
21 mination regarding duration of registration and level of notification.
22 The sex offender shall bear the burden of proving by clear and convinc-

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

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1 ing evidence that his or her risk of repeat offense and threat to public
2 safety is such that registration or verification is no longer necessary.
3 Such petition, if granted, shall not relieve the petitioner of the duty
4 to register pursuant to this article upon conviction of any offense
5 requiring registration in the future. Such a petition shall not be
6 considered more than once every two years. In the event that the sex
7 offender's petition for relief is granted, the district attorney may
8 appeal as of right from the order pursuant to the provisions of articles
9 fifty-five, fifty-six and fifty-seven of the civil practice law and
10 rules. Where counsel has been assigned to represent the sex offender
11 upon the ground that the sex offender is financially unable to retain
12 counsel, that assignment shall be continued throughout the pendency of
13 the appeal, and the person may appeal as a poor person pursuant to arti-
14 cle eighteen-B of the county law.

15 2.] Any sex offender required to register or verify pursuant to this
16 article may petition the sentencing court or the court which made the
17 determination regarding the level of notification for an order modifying
18 the level of notification. The petition shall set forth the level of
19 notification sought, together with the reasons for seeking such determi-
20 nation. The sex offender shall bear the burden of proving the facts
21 supporting the requested modification by clear and convincing evidence.
22 Such a petition shall not be considered more than annually. In the event
23 that the sex offender's petition to modify the level of notification is
24 granted, the district attorney may appeal as of right from the order
25 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
26 seven of the civil practice law and rules. Where counsel has been
27 assigned to represent the sex offender upon the ground that the sex
28 offender is financially unable to retain counsel, that assignment shall
29 be continued throughout the pendency of the appeal, and the person may
30 appeal as a poor person pursuant to article eighteen-B of the county
31 law.

32 [3.] 2. The district attorney may file a petition to modify the level
33 of notification for a sex offender with the sentencing court or with the
34 court which made the determination regarding the level of notification
35 OR WITH ANY COURT IN WHICH THE SEX OFFENDER HAS BEEN CONVICTED OF A NEW
36 CRIME, where the sex offender (a) has been convicted of a new crime, or
37 there has been a determination after a proceeding pursuant to section
38 410.70 of the criminal procedure law or section two hundred fifty-nine-i
39 of the executive law that the sex offender has violated one or more
40 conditions imposed as part of a sentence of a conditional discharge,
41 probation, parole or post-release supervision for a designated crime,
42 and (b) the conduct underlying the new crime or the violation is of a
43 nature that indicates an increased risk of a repeat sex offense. The
44 petition shall set forth the level of notification sought, together with
45 the reasons for seeking such determination. The district attorney shall
46 bear the burden of proving the facts supporting the requested modifica-
47 tion, by clear and convincing evidence. In the event that the district
48 attorney's petition is granted, the sex offender may appeal as of right
49 from the order, pursuant to the provisions of articles fifty-five,
50 fifty-six and fifty-seven of the civil practice law and rules. Where
51 counsel has been assigned to represent the offender upon the ground that
52 he or she is financially unable to retain counsel, that assignment shall
53 be continued throughout the pendency of the appeal, and the person may
54 proceed as a poor person, pursuant to article eighteen-B of the county
55 law.

1 [4.] 3. Upon receipt of a petition submitted pursuant to subdivision
2 one[,] OR two [or three] of this section, the court shall forward a copy
3 of the petition to the board and request an updated recommendation
4 pertaining to the sex offender and shall provide a copy of the petition
5 to the other party. The court shall also advise the sex offender that
6 he or she has the right to be represented by counsel at the hearing and
7 counsel will be appointed if he or she is financially unable to retain
8 counsel. A returnable form shall be enclosed in the court's notice to
9 the sex offender on which the sex offender may apply for assignment of
10 counsel. If the sex offender applies for assignment of counsel and the
11 court finds that the offender is financially unable to retain counsel,
12 the court shall assign counsel to represent the offender, pursuant to
13 article eighteen-B of the county law. Where the petition was filed by a
14 district attorney, at least thirty days prior to making an updated
15 recommendation the board shall notify the sex offender and his or her
16 counsel that the offender's case is under review and he or she is
17 permitted to submit to the board any information relevant to the review.
18 The board's updated recommendation on the sex offender shall be confi-
19 dential and shall not be available for public inspection. After receiv-
20 ing an updated recommendation from the board concerning a sex offender,
21 the court shall, at least thirty days prior to ruling upon the petition,
22 provide a copy of the updated recommendation to the sex offender, the
23 sex offender's counsel and the district attorney and notify them, in
24 writing, of the date set by the court for a hearing on the petition.
25 After reviewing the recommendation received from the board and any rele-
26 vant materials and evidence submitted by the sex offender and the
27 district attorney, the court may grant or deny the petition. The court
28 may also consult with the victim prior to making a determination on the
29 petition. The court shall render an order setting forth its determi-
30 nation, and the findings of fact and conclusions of law on which the
31 determination is based. If the petition is granted, it shall be the
32 obligation of the court to submit a copy of its order to the division.
33 Upon application of either party, the court shall seal any portion of
34 the court file or record which contains material that is confidential
35 under any state or federal statute.

36 S 4. This act shall take effect immediately, and shall apply to sex
37 offenders required to be registered immediately prior to such effective
38 date and to all sex offenders required to be registered on or after such
39 effective date.