

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- 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, the penal law and the executive law, in relation to requiring all level three sex offenders to be on probation for life and requiring all such sex offenders to submit to yearly polygraphic examinations while on probation or parole

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

- 1 Section 1. Section 168-d of the correction law is amended by adding a
2 new subdivision 5 to read as follows:
3 5. EVERY SEX OFFENDER HAVING BEEN DESIGNATED A LEVEL THREE RISK SHALL,
4 IN ADDITION TO ANY OTHER SENTENCES IMPOSED UPON SUCH OFFENDER, BE
5 SENTENCED TO PROBATION FOR LIFE TO BE SERVED AFTER THE TERMINATION OF
6 ALL SUCH OTHER SENTENCES.
7 S 2. The section heading of section 168-f of the correction law, as
8 amended by chapter 453 of the laws of 1999, is amended and a new subdi-
9 vision 7 is added to read as follows:
10 Duty to register and to verify; SUBMISSION TO A POLYGRAPHIC EXAMINA-
11 TION.
12 7. EVERY SEX OFFENDER WHO HAS BEEN GIVEN A LEVEL THREE DESIGNATION
13 SHALL WHILE ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION
14 SUBMIT TO A POLYGRAPHIC EXAMINATION ADMINISTERED BY HIS OR HER PAROLE
15 OFFICER, AT LEAST ONCE A YEAR, AND SHALL WHILE ON PROBATION SUBMIT TO A
16 POLYGRAPHIC EXAMINATION ADMINISTERED BY HIS OR HER PROBATION OFFICER, AT
17 LEAST ONCE A YEAR. EVERY POLYGRAPHIC EXAMINATION REQUIRED TO BE ADMIN-
18 ISTERED PURSUANT TO THIS SUBDIVISION SHALL BE CONDUCTED PURSUANT TO THE
19 RULES AND REGULATIONS OF THE DIVISION.
20 S 3. Section 168-h of the correction law is amended by adding a new
21 subdivision 4 to read as follows:

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

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1 4. ANY SEX OFFENDER HAVING BEEN DESIGNATED A LEVEL THREE RISK, SHALL
2 BE ON PROBATION FOR LIFE AFTER THE TERMINATION OF ANY OTHER SENTENCE
3 IMPOSED UPON SUCH OFFENDER. FURTHERMORE, EVERY SUCH SEX OFFENDER SHALL
4 SUBMIT TO A YEARLY POLYGRAPHIC EXAMINATION PURSUANT TO THE PROVISIONS OF
5 SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-EIGHT-F OF THIS ARTICLE.

6 S 4. Section 168-t of the correction law, as amended by chapter 373 of
7 the laws of 2007, is amended to read as follows:

8 S 168-t. Penalty. Any sex offender required to register or to verify
9 pursuant to the provisions of this article who fails to register or
10 verify in the manner and within the time periods provided for in this
11 article shall be guilty of a class E felony upon conviction for the
12 first offense, and upon conviction for a second or subsequent offense
13 shall be guilty of a class D felony. Any sex offender who violates the
14 provisions of section one hundred sixty-eight-v of this article OR WHO
15 FAILS TO SUBMIT TO A POLYGRAPHIC EXAMINATION IN THE MANNER AND WITH THE
16 FREQUENCY REQUIRED BY SUBDIVISION SEVEN OF SECTION ONE HUNDRED
17 SIXTY-EIGHT-F OF THIS ARTICLE shall be guilty of a class A misdemeanor
18 upon conviction for the first offense, and upon conviction for a second
19 or subsequent offense shall be guilty of a class D felony. Any such
20 failure to register [or], verify [may] OR SUBMIT TO A POLYGRAPHIC EXAM-
21 INATION SHALL also be the basis for revocation of parole pursuant to
22 section two hundred fifty-nine-i of the executive law or the basis for
23 revocation of probation pursuant to article four hundred ten of the
24 criminal procedure law.

25 S 5. Section 60.01 of the penal law is amended by adding a new subdi-
26 vision 5 to read as follows:

27 5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY,
28 IN ADDITION TO ANY OTHER SENTENCE AUTHORIZED FOR THE CONVICTION OF ANY
29 OFFENSE, ANY SEX OFFENDER HAVING BEEN DESIGNATED A LEVEL THREE RISK
30 SHALL ALSO BE SENTENCED TO PROBATION FOR LIFE TO COMMENCE UPON THE
31 TERMINATION OF ALL SUCH OTHER SENTENCES.

32 S 6. Paragraph (d) of subdivision 3 of section 65.00 of the penal law,
33 as amended by chapter 264 of the laws of 2003, is amended and a new
34 paragraph (e) is added to read as follows:

35 (d) For an unclassified misdemeanor, the period of probation shall be
36 three years if the authorized sentence of imprisonment is in excess of
37 three months, otherwise the period of probation shall be one year[.];

38 (E) NOTWITHSTANDING ANY OTHER PARAGRAPH OF THIS SUBDIVISION, FOR ANY
39 DEFENDANT WHO IS A SEX OFFENDER HAVING BEEN DESIGNATED A LEVEL THREE
40 RISK, THE PERIOD OF PROBATION SHALL BE LIFE.

41 S 7. The executive law is amended by adding a new section 257-b to
42 read as follows:

43 S 257-B. LEVEL THREE SEX OFFENDERS. 1. IT SHALL BE THE DUTY OF EVERY
44 PROBATION OFFICER TO FURNISH EACH SEX OFFENDER HAVING BEEN DESIGNATED A
45 LEVEL THREE RISK, WHO HAS BEEN ORDERED TO HIS OR HER SUPERVISION, WITH A
46 STATEMENT OF THE CONDITIONS OF PROBATION AND TO INSTRUCT SUCH SEX OFFEN-
47 DER WITH REGARD THERETO, TO KEEP INFORMED CONCERNING SUCH SEX OFFENDER'S
48 CONDUCT, HABITS, ASSOCIATES, EMPLOYMENTS, RECREATION AND WHEREABOUTS, TO
49 CONTACT AND ADMINISTER A POLYGRAPHIC EXAMINATION TO SUCH SEX OFFENDER AT
50 LEAST ONCE A YEAR PURSUANT TO THE RULES AND REGULATIONS OF THE DIVISION
51 OF CRIMINAL JUSTICE SERVICES, AND TO AID AND ENCOURAGE SUCH SEX OFFENDER
52 TO IMPROVE HIS OR HER CONDUCT, CONDITION AND GENERAL ATTITUDE TOWARD
53 SOCIETY AND TO AVOID UNLAWFUL SEXUAL CONDUCT.

54 2. ANY LOCAL PROBATION DEPARTMENT MAY REQUIRE, AS A CONDITION OF
55 PROBATION, A LEVEL THREE SEX OFFENDER TO CONTINUOUSLY WEAR AND MAINTAIN
56 A GLOBAL POSITIONING DEVICE.

1 3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY COUNTY AND
2 THE CITY OF NEW YORK, MAY ADOPT A LOCAL LAW REQUIRING LEVEL THREE SEX
3 OFFENDERS SERVING PROBATION TO PAY TO THE LOCAL PROBATION DEPARTMENT
4 WITH THE RESPONSIBILITY OF SUPERVISING SUCH SEX OFFENDER AN ADMINISTRA-
5 TIVE FEE TO BE DETERMINED BY THE COUNTY OR CITY. THE DEPARTMENT SHALL
6 WAIVE ALL OR PART OF SUCH FEE WHERE, BECAUSE OF THE INDIGENCE OF THE SEX
7 OFFENDER, THE PAYMENT OF THE ADMINISTRATIVE FEE WOULD WORK AN UNREASON-
8 ABLE HARDSHIP ON THE SEX OFFENDER, HIS OR HER IMMEDIATE FAMILY OR ANY
9 OTHER PERSON WHO IS DEPENDENT UPON SUCH SEX OFFENDER FOR FINANCIAL
10 SUPPORT.

11 (B) THE PROVISIONS OF SUBDIVISION SIX OF SECTION 420.10 OF THE CRIMI-
12 NAL PROCEDURE LAW SHALL GOVERN FOR PURPOSES OF COLLECTION OF THE ADMIN-
13 ISTRATIVE FEE.

14 (C) THE PROBATION ADMINISTRATIVE FEE AUTHORIZED BY THIS SUBDIVISION
15 SHALL NOT CONSTITUTE NOR BE IMPOSED AS A CONDITION OF PROBATION.

16 (D) IN THE EVENT OF NON-PAYMENT OF ANY FEES WHICH HAVE NOT BEEN WAIVED
17 BY THE LOCAL PROBATION DEPARTMENT, THE COUNTY OR THE CITY OF NEW YORK
18 MAY SEEK TO ENFORCE PAYMENT IN ANY MANNER PERMITTED BY LAW FOR ENFORCE-
19 MENT OF A DEBT.

20 (E) MONEYS COLLECTED PURSUANT TO THIS SUBDIVISION SHALL BE UTILIZED
21 FOR PROBATION SERVICES TO LEVEL THREE SEX OFFENDERS BY THE LOCAL
22 PROBATION DEPARTMENT.

23 S 8. Subdivision 2 of section 259-i of the executive law is amended by
24 adding a new paragraph (f) to read as follows:

25 (F)(I) IT SHALL BE THE DUTY OF EVERY PAROLE OFFICER HAVING CHARGE OF A
26 PAROLED, CONDITIONALLY RELEASED OR POST-RELEASED SUPERVISED SEX OFFENDER
27 HAVING A LEVEL THREE DESIGNATION TO ADMINISTER A POLYGRAPHIC EXAMINATION
28 TO SUCH SEX OFFENDER AT LEAST ONCE A YEAR PURSUANT TO THE RULES AND
29 REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

30 (II) ANY PAROLE OFFICER HAVING CHARGE OF A RELEASED OR PAROLED LEVEL
31 THREE SEX OFFENDER MAY REQUIRE, AS A CONDITION OF SUCH RELEASE OR
32 PAROLE, THAT SUCH OFFENDER CONTINUOUSLY WEAR AND MAINTAIN A GLOBAL POSI-
33 TIONING DEVICE.

34 S 9. This act shall take effect immediately, and shall apply to sex
35 offenders having been designated level three risks prior to, on or after
36 such effective date.