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

1063

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, SPANO -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the penal law, in relation to the supervision, location and classification of sex offenders; and to amend the criminal procedure law, in relation to denying youthful offender status to persons convicted of certain sex offenses

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

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

3. The provisions of subdivision two of this section shall be applied to a sex offender required to register under this article, except that such sex offender designated as a sexual predator or having been given a level three designation must personally verify his or her address with the local law enforcement agency every [ninety] THIRTY calendar days after the date of release or commencement of parole or post-release supervision, or probation, or release on payment of a fine, conditional discharge or unconditional discharge. The duty to personally verify shall be temporarily suspended during any period in which the sex offender is confined to any state or local correctional facility, hospital or institution and shall immediately recommence on the date of the sex offender's release.

S 2. Subdivisions 2 and 3 of section 168-h of the correction law, subdivision 2 as amended by chapter 1 of the laws of 2006 and subdivision 3 as added by chapter 11 of the laws of 2002, are amended to read as follows:

2. The duration of registration and verification for a sex offender who, on or after March eleventh, two thousand two, is designated a sexual predator, or a sexually violent offender, or a predicate sex offen-

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

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der, or who is classified as a level two or level three risk, shall be [annually] EVERY NINETY CALENDAR DAYS for life. Notwithstanding the foregoing, a sex offender who is classified as a level two risk and who is not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register and verify as provided by subdivision one of section one hundred sixty-eight-o of this article.

3. Any sex offender having been designated a level three risk or a sexual predator shall also personally verify his or her address every [ninety] THIRTY calendar days with the local law enforcement agency having jurisdiction where the offender resides.

S 3. Paragraph (c) of subdivision 5 of section 168-l of the correction law, as added by chapter 192 of the laws of 1995, is amended to read as follows:

(c) conditions of release that minimize risk [or] OF re-offense, including but not limited to whether the sex offender is under supervision; receiving counseling, therapy or treatment; [or] residing in a home situation that provides guidance and supervision; OR THE EXISTENCE OF PROVISIONS TO MINIMIZE THE NUMBER OF SEX OFFENDERS, SEXUAL PREDATORS OR SEXUALLY VIOLENT OFFENDERS THAT ARE PLACED OR LOCATED WITHIN RESIDENTIAL AREAS OF A MUNICIPALITY OR A PORTION OF A MUNICIPALITY THAT ALREADY CONTAINS A HIGH CONCENTRATION OF SUCH INDIVIDUALS;

S 4. The correction law is amended by adding a new section 168-ll to read as follows:

S 168-LL. GUIDELINES FOR LOCATION FOR SEX OFFENDERS. THE DIVISION, IN CONSULTATION AND COOPERATION WITH THE BOARD, DIVISION OF PAROLE, DEPARTMENT OF MENTAL HYGIENE AND LOCAL PROBATION DEPARTMENTS THROUGHOUT THE STATE, SHALL DEVELOP GUIDELINES AND PROCEDURES ON THE PLACEMENT, LOCATION, RELOCATION OR SETTLEMENT WITHIN A COMMUNITY OF SEX OFFENDERS, SEXUALLY VIOLENT OFFENDERS AND SEXUAL PREDATORS THAT HAVE BEEN CLASSIFIED WITH A LEVEL TWO OR LEVEL THREE DESIGNATION. SUCH GUIDELINES AND PROCEDURES SHALL BE BASED UPON, BUT NOT LIMITED TO, THE FOLLOWING:

1. THAT SUCH INDIVIDUALS ARE NOT OVERLY CONCENTRATED IN RESIDENTIAL AREAS OF ONE MUNICIPALITY OR PORTION OF A MUNICIPALITY;

2. ALL EFFORTS ARE BEING MADE TO LOCATE SUCH INDIVIDUALS IN AREAS THAT HAVE ADEQUATE SUPPORT SERVICES TO MINIMIZE THE RISK OF RE-OFFENSE;

3. THAT FAMILY AND FRIENDS ARE LOCATED REASONABLY CLOSE TO SUCH INDIVIDUALS TO PROVIDE FINANCIAL, PSYCHOLOGICAL, SOCIAL AND MORAL SUPPORT TO SUCH INDIVIDUALS IN ORDER TO MINIMIZE THE RISK OF RE-OFFENSE;

4. MEASURES ARE TAKEN TO ENSURE THAT SUCH INDIVIDUALS ARE PLACED IN COMMUNITIES THAT CAN PHYSICALLY ACCOMMODATE SUCH INDIVIDUALS AND THAT SUCH INDIVIDUALS ARE NOT LOCATED NEAR RE-OFFENSE RISK CENTERS INCLUDING, BUT NOT LIMITED TO, SCHOOLS, DAY CARE CENTERS, PLAYGROUNDS, OR ANY OTHER FACILITY OR AREA THAT ATTRACTS CHILDREN OR IN WHICH CHILDREN CONGREGATE;

5. PROCEDURES ARE ESTABLISHED TO MINIMIZE THE NUMBER OF SUCH INDIVIDUALS THAT ARE CLASSIFIED AS UNDOMICILED SEX OFFENDERS OR SEXUAL PREDATORS SO THAT SUCH INDIVIDUALS CAN BE PLACED IN APPROPRIATE LIVING AREAS, LOCATIONS, RE-LOCATIONS OR SETTLEMENTS THAT CAN PROVIDE ADEQUATE TREATMENT AND MONITORING OF SUCH INDIVIDUALS AND SO THAT SUCH INDIVIDUALS ARE NOT HIGHLY OR OVERLY CONCENTRATED IN ONE MUNICIPALITY OR PORTION OF A MUNICIPALITY; AND

6. THAT A SUFFICIENT TRACKING SYSTEM IS ESTABLISHED TO ENABLE THE DEPARTMENT OF MENTAL HYGIENE, DIVISION OF PAROLE, LAW ENFORCEMENT AGENCIES HAVING JURISDICTION AND PROBATION DEPARTMENTS TO READILY MONITOR THE WHEREABOUTS AND ACTIVITIES OF SUCH INDIVIDUALS.

S 5. 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 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. UPON ANY CONVICTION PURSUANT TO THIS SECTION, THE SEX OFFENDER MAY BE EXAMINED AND RECLASSIFIED AS A LEVEL TWO RISK OR LEVEL THREE RISK IF WARRANTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

S 6. The correction law is amended by adding a new section 168-tt to read as follows:

S 168-TT. FAILURE TO REGISTER OR VERIFY AS A DESIGNATED LEVEL TWO OR LEVEL THREE SEX OFFENDER OR SEXUAL PREDATOR; AGGRAVATED NONCOMPLIANCE; NONCOMPLIANCE; PENALTY. 1. ANY DESIGNATED LEVEL THREE SEX OFFENDER OR SEXUAL PREDATOR WHO FAILS TO REGISTER OR VERIFY IN THE MANNER AND WITHIN THE TIME PERIODS REQUIRED IN THIS ARTICLE SHALL BE GUILTY OF AGGRAVATED NONCOMPLIANCE AND SHALL BE GUILTY OF A CLASS D FELONY FOR A FIRST CONVICTION OF SUCH OFFENSE AND A CLASS C FELONY FOR A SECOND OR SUBSEQUENT CONVICTION. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, UPON ANY CONVICTION OF AN OFFENSE OF AGGRAVATED NONCOMPLIANCE SUCH PERSON SHALL, WITHOUT EXCEPTION, BE SUBJECT TO MANDATORY LIFETIME POST-RELEASE SUPERVISION PURSUANT TO THIS ARTICLE AND THE PENAL LAW.

2. ANY DESIGNATED LEVEL TWO SEX OFFENDER WHO FAILS TO REGISTER OR VERIFY IN THE MANNER AND WITHIN THE TIME PERIODS REQUIRED IN THIS ARTICLE SHALL BE GUILTY OF NONCOMPLIANCE AND SHALL, WITHOUT EXCEPTION, UNLESS RELIEVED PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-EIGHT-O OF THIS ARTICLE, BE SUBJECT TO MANDATORY LIFETIME POST-RELEASE SUPERVISION PURSUANT TO THIS ARTICLE AND THE PENAL LAW.

3. LIFETIME SUPERVISION MAY BE PROVIDED BY PROBATION SERVICES, THE PAROLE BOARD OR ANY AUTHORIZED POST-RELEASE SUPERVISION PROGRAM. 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. UPON ANY CONVICTION UNDER THIS SECTION, THE SEX OFFENDER SHALL BE CLASSIFIED AS NOT LESS THAN A LEVEL TWO RISK AND SHALL BE CLASSIFIED AS A LEVEL THREE RISK IF WARRANTED PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE.

S 7. The penal law is amended by adding a new section 60.14 to read as follows:

S 60.14 AUTHORIZED DISPOSITION; FAILURE TO REGISTER OR VERIFY AS A DESIGNATED LEVEL TWO OR LEVEL THREE SEX OFFENDER OR SEXUAL PREDATOR; AGGRAVATED NONCOMPLIANCE; NONCOMPLIANCE.

1. WHEN A PERSON IS CONVICTED OF AGGRAVATED NONCOMPLIANCE, AS DEFINED IN SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-EIGHT-TT OF THE CORRECTION LAW, THE COURT SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SAID SECTION, SENTENCE THE DEFENDANT TO A TERM OF IMPRISONMENT FOR A

CLASS D FELONY OR CLASS C FELONY, AS THE CASE MAY BE, IN ACCORDANCE WITH SUBDIVISIONS ONE THROUGH THREE OF SECTION 70.00 OF THIS TITLE.

2. WHEN A PERSON IS CONVICTED OF NONCOMPLIANCE, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-TT OF THE CORRECTION LAW, THE COURT SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE HUNDRED SIXTY-EIGHT-T OF THE CORRECTION LAW, SENTENCE THE DEFENDANT TO A TERM OF IMPRISONMENT FOR A CLASS E FELONY OR CLASS D FELONY, AS THE CASE MAY BE, IN ACCORDANCE WITH SUBDIVISIONS ONE THROUGH THREE OF SECTION 70.00 OF THIS TITLE.

3. EACH DISPOSITION REQUIRED BY THIS SECTION SHALL ALSO INCLUDE, AS A PART THEREOF, AN ADDITIONAL PERIOD OF POST-RELEASE SUPERVISION. SUCH PERIOD SHALL COMMENCE UPON SUCH PERSON'S RELEASE FROM IMPRISONMENT PURSUANT TO ARTICLE SEVENTY OF THIS TITLE. SUCH PERIOD OF POST-RELEASE SUPERVISION SHALL BE FOR LIFE.

S 8. Section 70.06 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. LIFETIME POST-RELEASE SUPERVISION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY SENTENCE A PERSON CONVICTED OF AGGRAVATED NONCOMPLIANCE OR NONCOMPLIANCE, AS DEFINED IN SECTION ONE HUNDRED SIXTY-EIGHT-TT OF THE CORRECTION LAW, TO LIFETIME POST-RELEASE SUPERVISION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 60.14 OF THIS TITLE.

S 9. Paragraph (a) of subdivision 2 of section 720.10 of the criminal procedure law, as amended by chapter 316 of the laws of 2006, is amended to read as follows:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20 OF THIS CHAPTER, except as provided in subdivision three OF THIS SECTION, or (iii) rape in the first degree, RAPE IN THE SECOND DEGREE, criminal sexual act in the first degree, [or] CRIMINAL SEXUAL ACT IN THE SECOND DEGREE, aggravated sexual abuse IN THE FIRST DEGREE, AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE OR FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE, except as provided in subdivision three OF THIS SECTION, or

S 10. Subdivision 3 of section 720.10 of the criminal procedure law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

3. Notwithstanding the provisions of subdivision two OF THIS SECTION, a youth who has been convicted of an armed felony offense or of rape in the first degree, RAPE IN THE SECOND DEGREE, criminal sexual act in the first degree, [or] CRIMINAL SEXUAL ACT IN THE SECOND DEGREE, SEXUAL ABUSE IN THE FIRST DEGREE, aggravated sexual abuse IN THE FIRST DEGREE, AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE OR FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded

to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

S 11. This act shall take effect immediately.