

10895

I N A S S E M B L Y

April 28, 2010

Introduced by M. of A. AUBRY -- (at request of the Governor) -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the criminal procedure law, in relation to sex offenders

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

1 Section 1. Paragraph (a) of subdivision 2 of section 168-a of the
2 correction law, as amended by chapter 405 of the laws of 2008, is
3 amended to read as follows:

4 (a) (i) a conviction of or a conviction for an attempt to commit any
5 of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
6 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two
7 hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20
8 or 135.25 of such law relating to kidnapping offenses, provided the
9 victim of such kidnapping or related offense is less than seventeen
10 years old and the offender is not the parent of the victim, or section
11 230.04, where the person patronized is in fact less than seventeen years
12 of age, 230.05 or 230.06, or subdivision two of section 230.30, or
13 section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a
14 conviction for an attempt to commit any of the provisions of section
15 235.22 of the penal law, or (iii) a conviction of or a conviction for an
16 attempt to commit any provisions of the foregoing sections committed or
17 attempted as a hate crime defined in section 485.05 of the penal law or
18 as a crime of terrorism defined in section 490.25 of such law, or [as]
19 (IV) A CONVICTION OF OR A CONVICTION FOR AN ATTEMPT TO COMMIT a sexually
20 motivated felony defined in section 130.91 of [such] THE PENAL law; or

21 S 2. Subparagraph (ii) of paragraph (d) of subdivision 2 of section
22 168-a of the correction law, as amended by chapter 11 of the laws of
23 2002, is amended to read as follows:

24 (ii) a [felony] CRIME in any other jurisdiction for which the offender
25 is required to register as a sex offender in the jurisdiction in which
26 the conviction occurred or,

27 S 3. Paragraph (e) of subdivision 2 of section 168-a of the correction
28 law, as added by chapter 69 of the laws of 2003, is amended to read as
29 follows:

30 (e) a conviction of OR A CONVICTION FOR AN ATTEMPT TO COMMIT any of
31 the provisions of subdivision two, three or four of section 250.45 of

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

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1 the penal law, unless upon motion by the defendant, the trial court,
2 having regard to the nature and circumstances of the crime and to the
3 history and character of the defendant, is of the opinion that registra-
4 tion would be unduly harsh and inappropriate.

5 S 4. Paragraphs (b-2), (b-3) and (c) of subdivision 2 of section 168-f
6 of the correction law, paragraphs (b-2) and (b-3) as added by section 2
7 of part 0 of chapter 56 of the laws of 2005 and paragraph (c) as amended
8 by chapter 453 of the laws of 1999, are amended to read as follows:

9 (b-2) If the sex offender has been given a level TWO OR three desig-
10 nation, he or she shall personally appear at the law enforcement agency
11 having jurisdiction within twenty days of the first anniversary of the
12 sex offender's initial registration and every year thereafter during the
13 period of registration for the purpose of providing a current photograph
14 of such offender. The law enforcement agency having jurisdiction shall
15 photograph the sex offender and shall promptly forward a copy of such
16 photograph to the division. For purposes of this paragraph, if such sex
17 offender is confined in a state or local correctional facility, the
18 local law enforcement agency having jurisdiction shall be the warden,
19 superintendent, sheriff or other person in charge of the state or local
20 correctional facility.

21 (b-3) If the sex offender has been given a level one [or level two]
22 designation, he or she shall personally appear at the law enforcement
23 agency having jurisdiction within twenty days of the third anniversary
24 of the sex offender's initial registration and every three years there-
25 after during the period of registration for the purpose of providing a
26 current photograph of such offender. The law enforcement agency having
27 jurisdiction shall photograph the sex offender and shall promptly
28 forward a copy of such photograph to the division. For purposes of this
29 paragraph, if such sex offender is confined in a state or local correc-
30 tional facility, the local law enforcement agency having jurisdiction
31 shall be the warden, superintendent, sheriff or other person in charge
32 of the state or local correctional facility.

33 (c) If the sex offender fails to mail the signed verification form to
34 the division within ten calendar days after receipt of the form, he or
35 she shall be in violation of this [section unless he proves that he or
36 she has not changed his or her residence address] ARTICLE.

37 S 5. Subdivision 3 of section 168-f of the correction law, as amended
38 by chapter 11 of the laws of 2002, is amended to read as follows:

39 3. The provisions of subdivision two of this section shall be applied
40 to a sex offender required to register under this article except that
41 such sex offender designated as a sexual predator or having been given a
42 level three designation must ALSO personally verify his or her address
43 with the local law enforcement agency NO LATER THAN TEN CALENDAR DAYS
44 AFTER THE DATE OF RELEASE OR COMMENCEMENT OF PAROLE, POST-RELEASE SUPER-
45 VISION, OR PROBATION, OR RELEASE ON PAYMENT OF A FINE, CONDITIONAL
46 DISCHARGE OR UNCONDITIONAL DISCHARGE OR ANY CHANGE OF RESIDENCE ADDRESS
47 AND every ninety calendar days [after the date of release or commence-
48 ment of parole or post-release supervision, or probation, or release on
49 payment of a fine, conditional discharge or unconditional discharge]
50 THEREAFTER. The duty to personally verify shall be temporarily suspended
51 during any period in which the sex offender is confined to any state or
52 local correctional facility, hospital or institution and shall imme-
53 diately recommence on the date of the sex offender's release.

54 S 6. Paragraph (b) of subdivision 6 of section 168-l of the correction
55 law, as amended by chapter 106 of the laws of 2006, is amended to read
56 as follows:

1 (b) If the risk of repeat offense is moderate, a level two designation
2 shall be given to such sex offender. In such case the law enforcement
3 agency or agencies having jurisdiction and the law enforcement agency or
4 agencies having had jurisdiction at the time of his or her conviction
5 shall be notified and may disseminate relevant information which shall
6 include a photograph and description of the offender and which may
7 include the exact name and any aliases used by the sex offender,
8 [approximate] EXACT address [based on sex offender's zip code], back-
9 ground information including the offender's crime of conviction, mode of
10 operation, type of victim targeted, the name and address of any institu-
11 tion of higher education at which the sex offender is enrolled, attends,
12 is employed or resides and the description of special conditions imposed
13 on the offender to any entity with vulnerable populations related to the
14 nature of the offense committed by such sex offender. Any entity receiv-
15 ing information on a sex offender may disclose or further disseminate
16 such information at its discretion. In addition, in such case, the
17 information described herein shall also be provided in the [subdirecto-
18 ry] DIRECTORY established in this article and notwithstanding any other
19 provision of law, such information shall, upon request, be made avail-
20 able to the public.

21 Such law enforcement agencies shall compile, maintain and update a
22 listing of vulnerable organizational entities within its jurisdiction.
23 Such listing shall be utilized for notification of such organizations in
24 disseminating such information on level two sex offenders pursuant to
25 this paragraph. Such listing shall include and not be limited to:
26 superintendents of schools or chief school administrators, superinten-
27 dents of parks, public and private libraries, public and private school
28 bus transportation companies, day care centers, nursery schools, pre-
29 schools, neighborhood watch groups, community centers, civic associ-
30 ations, nursing homes, victim's advocacy groups and places of worship.

31 S 7. Subdivision 1 of section 168-q of the correction law, as amended
32 by chapter 478 of the laws of 2009, is amended to read as follows:

33 1. The division shall maintain a subdirectory of level two and three
34 sex offenders. The subdirectory shall include the exact address, address
35 of the offender's place of employment and photograph of the sex offender
36 along with the following information, if available: name, physical
37 description, age and distinctive markings. Background information
38 including the sex offender's crime of conviction, modus of operation,
39 type of victim targeted, the name and address of any institution of
40 higher education at which the sex offender is enrolled, attends, is
41 employed or resides and a description of special conditions imposed on
42 the sex offender shall also be included. The subdirectory shall have sex
43 offender listings categorized by county and zip code. [A copy of the
44 subdirectory shall annually be distributed to the offices of local
45 village, town, city, county or state law enforcement agencies for
46 purposes of public access. The division shall distribute monthly
47 updates to the offices of local village, town, city, county or state law
48 enforcement agencies for purposes of public access. Such departments
49 shall require that a person in writing provide their name and address
50 prior to viewing the subdirectory. Any information identifying the
51 victim by name, birth date, address or relation to the sex offender
52 shall be excluded from the subdirectory distributed for purposes of
53 public access. The subdirectory provided for herein shall be updated
54 monthly to maintain its efficiency and usefulness and shall be computer
55 accessible.] Such subdirectory shall be made available at all times on
56 the internet via the division homepage. Any person may apply to the

1 division to receive automated e-mail notifications whenever a new or
2 updated subdirectory registration occurs in a geographic area specified
3 by such person. The division shall furnish such service at no charge to
4 such person, who shall request e-mail notification by county and/or zip
5 code on forms developed and provided by the division. E-mail notifica-
6 tion is limited to three geographic areas per e-mail account.

7 S 8. Subdivision 3 of section 168-o of the correction law, as amended
8 by chapter 11 of the laws of 2002, is amended to read as follows:

9 3. The district attorney may file a petition to modify the level of
10 notification for a sex offender with the sentencing court or with the
11 court which made the determination regarding the level of notification
12 OR WITH ANY COURT IN WHICH THE SEX OFFENDER HAS BEEN CONVICTED OF A NEW
13 CRIME, where the sex offender (a) has been convicted of a new crime, or
14 there has been a determination after a proceeding pursuant to section
15 410.70 of the criminal procedure law or section two hundred fifty-nine-i
16 of the executive law that the sex offender has violated one or more
17 conditions imposed as part of a sentence of a conditional discharge,
18 probation, parole or post-release supervision for a designated crime,
19 and (b) the conduct underlying the new crime or the violation is of a
20 nature that indicates an increased risk of a repeat sex offense. The
21 petition shall set forth the level of notification sought, together with
22 the reasons for seeking such determination. The district attorney shall
23 bear the burden of proving the facts supporting the requested modifica-
24 tion, by clear and convincing evidence. In the event that the district
25 attorney's petition is granted, the sex offender may appeal as of right
26 from the order, pursuant to the provisions of articles fifty-five,
27 fifty-six and fifty-seven of the civil practice law and rules. Where
28 counsel has been assigned to represent the offender upon the ground that
29 he or she is financially unable to retain counsel, that assignment shall
30 be continued throughout the pendency of the appeal, and the person may
31 proceed as a poor person, pursuant to article eighteen-B of the county
32 law.

33 S 9. Subdivision 4 of section 20.40 of the criminal procedure law is
34 amended by adding a new paragraph (n) to read as follows:

35 (N) AN OFFENSE OF FAILURE TO REGISTER OR VERIFY AS A SEX OFFENDER AS
36 REQUIRED BY ARTICLE SIX-C OF THE CORRECTION LAW MAY BE PROSECUTED IN (I)
37 ANY COUNTY IN WHICH SUCH SEX OFFENDER RESIDES; (II) ANY COUNTY IN WHICH
38 SUCH SEX OFFENDER PREVIOUSLY RESIDED DURING THE PERIOD IN WHICH SUCH SEX
39 OFFENDER WAS REQUIRED TO REGISTER; (III) ANY COUNTY IN WHICH SUCH SEX
40 OFFENDER NOTIFIED THE DIVISION OF CRIMINAL JUSTICE SERVICES, PURSUANT TO
41 ARTICLE SIX-C OF THE CORRECTION LAW, THAT HE OR SHE WAS RESIDING OR
42 INTENDED TO RESIDE; OR (IV) ANY COUNTY IN WHICH SUCH SEX OFFENDER WAS
43 CONFINED IN A STATE OR LOCAL CORRECTIONAL FACILITY, HOSPITAL OR INSTITU-
44 TION WHEN HE OR SHE MADE A NOTIFICATION OF A RESIDENCE ADDRESS AS
45 REQUIRED BY ARTICLE SIX-C OF THE CORRECTION LAW.

46 S 10. Subdivision 3-a of section 190.30 of the criminal procedure law,
47 as added by chapter 453 of the laws of 1999, is amended to read as
48 follows:

49 3-a. (A) A sex offender registration form, sex offender registration
50 continuation/supplemental form, sex offender registry address verifica-
51 tion form, sex offender change of address form or a copy of such form
52 maintained by the division of criminal justice services concerning an
53 individual who is the subject of a grand jury proceeding, may, when
54 certified by a person designated by the commissioner of the division of
55 criminal justice services as the person to certify such records, as a

1 true copy thereof, be received in such grand jury proceeding as evidence
2 of the facts stated therein.

3 (B) A STATEMENT, SIGNED BY A PERSON DESIGNATED IN PARAGRAPH (A) OF
4 THIS SUBDIVISION, THAT HE OR SHE HAS MADE A SEARCH OF THE RECORDS MAIN-
5 TAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND HAS FOUND NO
6 RECORD OF A SEX OFFENDER REGISTRATION FORM, SEX OFFENDER REGISTRATION
7 CONTINUATION/SUPPLEMENTAL FORM, SEX OFFENDER REGISTRY ADDRESS VERIFICA-
8 TION FORM OR SEX OFFENDER CHANGE OF ADDRESS FORM IS PRIMA FACIE EVIDENCE
9 THAT THE RECORDS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES CONTAIN NO
10 SUCH SEX OFFENDER REGISTRATION FORM, SEX OFFENDER REGISTRATION
11 CONTINUATION/SUPPLEMENTAL FORM, SEX OFFENDER REGISTRY ADDRESS VERIFICA-
12 TION FORM OR SEX OFFENDER CHANGE OF ADDRESS FORM.

13 S 11. Paragraph (a) of subdivision 2 of section 720.10 of the criminal
14 procedure law, as amended by chapter 316 of the laws of 2006, is amended
15 to read as follows:

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

27 S 12. Subdivision 3 of section 720.10 of the criminal procedure law,
28 as amended by chapter 264 of the laws of 2003, is amended to read as
29 follows:

30 3. Notwithstanding the provisions of subdivision two, a youth who has
31 been convicted of an armed felony offense or of rape in the first
32 degree, RAPE IN THE SECOND DEGREE, criminal sexual act in the first
33 degree, [or] CRIMINAL SEXUAL ACT IN THE SECOND DEGREE, SEXUAL ABUSE IN
34 THE FIRST DEGREE, aggravated sexual abuse IN THE FIRST DEGREE, AGGRA-
35 VATED SEXUAL ABUSE IN THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE
36 THIRD DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST
37 DEGREE, COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE,
38 OR FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE is an eligible
39 youth if the court determines that one or more of the following factors
40 exist: (i) mitigating circumstances that bear directly upon the manner
41 in which the crime was committed; or (ii) where the defendant was not
42 the sole participant in the crime, the defendant's participation was
43 relatively minor although not so minor as to constitute a defense to the
44 prosecution. Where the court determines that the eligible youth is a
45 youthful offender, the court shall make a statement on the record of the
46 reasons for its determination, a transcript of which shall be forwarded
47 to the state division of criminal justice services, to be kept in
48 accordance with the provisions of subdivision three of section eight
49 hundred thirty-seven-a of the executive law.

50 S 13. This act shall take effect immediately; provided, however, that
51 the amendments to subparagraph (ii) of paragraph (d) of subdivision 2 of
52 section 168-a of the correction law, made by section two of this act
53 shall apply to persons who committed a crime in another jurisdiction
54 prior to the effective date of this act who establish a residence in
55 this state on or after the effective date of this act.