

3662

2009-2010 Regular Sessions

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:

- 1 Section 1. Paragraph (f) of subdivision 1 of section 168-b of the
2 correction law, as relettered by chapter 10 of the laws of 2003, is
3 relettered paragraph (g) and a new paragraph (f) is added to read as
4 follows:
5 (F) IF THE SEX OFFENDER HAS BEEN GIVEN A LEVEL 2 OR 3 DESIGNATION AND
6 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
7 THIS ARTICLE, WHETHER SUCH OFFENDER IS SUBJECT TO A RESIDENCY
8 RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTI-
9 CLE.
10 S 2. Section 168-b of the correction law is amended by adding a new
11 subdivision 12 to read as follows:
12 12. THE DIVISION, UPON INITIAL REGISTRATION AND THEREAFTER IN ANNUAL
13 CORRESPONDENCE AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, SHALL
14 ADVISE EACH SEX OFFENDER WHO IS SUBJECT TO A RESIDENCY RESTRICTION
15 PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, CONCERN-
16 ING THE TERM'S SPECIFIC DURATION AND THE ACCURATE TERMINATION DATE OF
17 SUCH RESTRICTION.
18 S 3. Subdivisions 2 and 3 of section 168-d of the correction law,
19 subdivision 2 as amended by chapter 684 of the laws of 2005 and subdivi-
20 sion 3 as amended by chapter 11 of the laws of 2002, are amended to read
21 as follows:

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

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1 2. Any sex offender, who is released on probation or discharged upon
2 payment of a fine, conditional discharge or unconditional discharge
3 shall, prior to such release or discharge, be informed of his or her
4 duty to register under this article by the court in which he or she was
5 convicted. At the time sentence is imposed, such sex offender shall
6 register with the division on a form prepared by the division. The court
7 shall require the sex offender to read and sign such form and to
8 complete the registration portion of such form. The court shall on such
9 form obtain the address where the sex offender expects to reside upon
10 his or her release, and the name and address of any institution of high-
11 er education he or she expects to be employed by, enrolled in, attending
12 or employed, whether for compensation or not, and whether he or she
13 expects to reside in a facility owned or operated by such an institu-
14 tion, and shall report such information to the division. The court shall
15 give one copy of the form to the sex offender and shall send two copies
16 to the division which shall forward the information to the law enforce-
17 ment agencies having jurisdiction. The court shall also notify the
18 district attorney and the sex offender of the date of the determination
19 proceeding to be held pursuant to subdivision three of this section,
20 which shall be held at least forty-five days after such notice is given.
21 This notice shall include the following statement or a substantially
22 similar statement: "This proceeding is being held to determine whether
23 you will be classified as a level 3 offender (risk of repeat offense is
24 high), a level 2 offender (risk of repeat offense is moderate), or a
25 level 1 offender (risk of repeat offense is low), or whether you will be
26 designated as a sexual predator, a sexually violent offender or a predi-
27 cate sex offender, which will determine how long you must register as a
28 sex offender and how much information can be provided to the public
29 concerning your registration. IF YOU ARE CLASSIFIED AS A LEVEL 2 OR
30 LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE COURT MAY ALSO DETERMINE
31 WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY
32 RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail
33 to appear at this proceeding, without sufficient excuse, it shall be
34 held in your absence. Failure to appear may result in a longer period of
35 registration or a higher level of community notification because you are
36 not present to offer evidence or contest evidence offered by the
37 district attorney." The court shall also advise the sex offender that
38 he or she has a right to a hearing prior to the court's determination,
39 that he or she has the right to be represented by counsel at the hearing
40 and that counsel will be appointed if he or she is financially unable to
41 retain counsel. If the sex offender applies for assignment of counsel to
42 represent him or her at the hearing and counsel was not previously
43 assigned to represent the sex offender in the underlying criminal
44 action, the court shall determine whether the offender is financially
45 unable to retain counsel. If such a finding is made, the court shall
46 assign counsel to represent the sex offender pursuant to article eigh-
47 teen-B of the county law. Where the court orders a sex offender released
48 on probation, such order must include a provision requiring that he or
49 she comply with the requirements of this article. Where such sex offen-
50 der violates such provision, probation may be immediately revoked in the
51 manner provided by article four hundred ten of the criminal procedure
52 law.

53 3. For sex offenders released on probation or discharged upon payment
54 of a fine, conditional discharge or unconditional discharge, it shall be
55 the duty of the court applying the guidelines established in subdivision
56 five of section one hundred sixty-eight-1 of this article to determine

1 the level of notification pursuant to subdivision six of section one
2 hundred sixty-eight-1 of this article [and], whether such sex offender
3 shall be designated a sexual predator, sexually violent offender, or
4 predicate sex offender as defined in subdivision seven of section one
5 hundred sixty-eight-a of this article AND, WHEN DETERMINING THE LEVEL OF
6 NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN SUBDIVISION
7 FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A
8 SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS
9 CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTI-
10 CLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE
11 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least fifteen days prior to
12 the determination proceeding, the district attorney shall provide to the
13 court and the sex offender a written statement setting forth the deter-
14 minations sought by the district attorney together with the reasons for
15 seeking such determinations. The court shall allow the sex offender to
16 appear and be heard. The state shall appear by the district attorney, or
17 his or her designee, who shall bear the burden of proving the facts
18 supporting the determinations sought by clear and convincing evidence.
19 Where there is a dispute between the parties concerning the determi-
20 nations, the court shall adjourn the hearing as necessary to permit the
21 sex offender or the district attorney to obtain materials relevant to
22 the determinations from any state or local facility, hospital, institu-
23 tion, office, agency, department or division. Such materials may be
24 obtained by subpoena if not voluntarily provided to the requesting
25 party. In making the determinations, the court shall review any victim's
26 statement and any relevant materials and evidence submitted by the sex
27 offender and the district attorney and the court may consider reliable
28 hearsay evidence submitted by either party provided that it is relevant
29 to the determinations. Facts previously proven at trial or elicited at
30 the time of entry of a plea of guilty shall be deemed established by
31 clear and convincing evidence and shall not be relitigated. The court
32 shall render an order setting forth its determinations and the findings
33 of fact and conclusions of law on which the determinations are based. A
34 copy of the order shall be submitted by the court to the division. Upon
35 application of either party, the court shall seal any portion of the
36 court file or record which contains material that is confidential under
37 any state or federal statute. Either party may appeal as of right from
38 the order pursuant to the provisions of articles fifty-five, fifty-six
39 and fifty-seven of the civil practice law and rules. Where counsel has
40 been assigned to represent the sex offender upon the ground that the sex
41 offender is financially unable to retain counsel, that assignment shall
42 be continued throughout the pendency of the appeal, and the person may
43 appeal as a poor person pursuant to article eighteen-B of the county
44 law.

45 S 4. Subdivision 2 of section 168-k of the correction law, as amended
46 by chapter 684 of the laws of 2005, is amended to read as follows:

47 2. The division shall advise the board that the sex offender has
48 established residence in this state. The board shall determine whether
49 the sex offender is required to register with the division. If it is
50 determined that the sex offender is required to register, the division
51 shall notify the sex offender of his or her duty to register under this
52 article and shall require the sex offender to sign a form as may be
53 required by the division acknowledging that the duty to register and the
54 procedure for registration has been explained to the sex offender. The
55 division shall obtain on such form the address where the sex offender
56 expects to reside within the state and the sex offender shall retain one

1 copy of the form and send two copies to the division which shall provide
2 the information to the law enforcement agency having jurisdiction where
3 the sex offender expects to reside within this state. No later than
4 thirty days prior to the board making a recommendation, the sex offender
5 shall be notified that his or her case is under review and that he or
6 she is permitted to submit to the board any information relevant to the
7 review. After reviewing any information obtained, and applying the
8 guidelines established in subdivision five of section one hundred
9 sixty-eight-1 of this article, the board shall within sixty calendar
10 days make a recommendation regarding the level of notification pursuant
11 to subdivision six of section one hundred sixty-eight-1 of this article
12 [and], whether such sex offender shall be designated a sexual predator,
13 sexually violent offender, or predicate sex offender as defined in
14 subdivision seven of section one hundred sixty-eight-a of this article
15 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDE-
16 LINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED
17 SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A
18 LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH
19 REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A
20 RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF
21 THIS ARTICLE. This recommendation shall be confidential and shall not
22 be available for public inspection. It shall be submitted by the board
23 to the county court or supreme court and to the district attorney in the
24 county of residence of the sex offender and to the sex offender. It
25 shall be the duty of the county court or supreme court in the county of
26 residence of the sex offender, applying the guidelines established in
27 subdivision five of section one hundred sixty-eight-1 of this article,
28 to determine the level of notification pursuant to subdivision six of
29 section one hundred sixty-eight-1 of this article [and], whether such
30 sex offender shall be designated a sexual predator, sexually violent
31 offender, or predicate sex offender as defined in subdivision seven of
32 section one hundred sixty-eight-a of this article AND, WHEN DETERMINING
33 THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN
34 SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE,
35 WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO
36 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
37 THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
38 SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least thirty days
39 prior to the determination proceeding, such court shall notify the
40 district attorney and the sex offender, in writing, of the date of the
41 determination proceeding and the court shall also provide the district
42 attorney and sex offender with a copy of the recommendation received
43 from the board and any statement of the reasons for the recommendation
44 received from the board. This notice shall include the following state-
45 ment or a substantially similar statement: "This proceeding is being
46 held to determine whether you will be classified as a level 3 offender
47 (risk of repeat offense is high), a level 2 offender (risk of repeat
48 offense is moderate), or a level 1 offender (risk of repeat offense is
49 low), or whether you will be designated as a sexual predator, a sexually
50 violent offender or a predicate sex offender, which will determine how
51 long you must register as a sex offender and how much information can be
52 provided to the public concerning your registration. IF YOU ARE CLASSI-
53 FIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE
54 COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY
55 RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT
56 RESIDENCE. If you fail to appear at this proceeding, without sufficient

1 excuse, it shall be held in your absence. Failure to appear may result
2 in a longer period of registration or a higher level of community
3 notification because you are not present to offer evidence or contest
4 evidence offered by the district attorney." The court shall also advise
5 the sex offender that he or she has a right to a hearing prior to the
6 court's determination, that he or she has the right to be represented by
7 counsel at the hearing and that counsel will be appointed if he or she
8 is financially unable to retain counsel. A returnable form shall be
9 enclosed in the court's notice to the sex offender on which the sex
10 offender may apply for assignment of counsel. If the sex offender
11 applies for assignment of counsel and the court finds that the offender
12 is financially unable to retain counsel, the court shall assign counsel
13 to represent the sex offender pursuant to article eighteen-B of the
14 county law. If the district attorney seeks a determination that differs
15 from the recommendation submitted by the board, at least ten days prior
16 to the determination proceeding the district attorney shall provide to
17 the court and the sex offender a statement setting forth the determi-
18 nations sought by the district attorney together with the reasons for
19 seeking such determinations. The court shall allow the sex offender to
20 appear and be heard. The state shall appear by the district attorney, or
21 his or her designee, who shall bear the burden of proving the facts
22 supporting the determinations sought by clear and convincing evidence.
23 It shall be the duty of the court applying the guidelines established in
24 subdivision five of section one hundred sixty-eight-1 of this article to
25 determine the level of notification pursuant to subdivision six of
26 section one hundred sixty-eight-1 of this article [and], whether such
27 sex offender shall be designated a sexual predator, sexually violent
28 offender, or predicate sex offender as defined in subdivision seven of
29 section one hundred sixty-eight-a of this article AND, WHEN DETERMINING
30 THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED BY
31 SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE,
32 WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO
33 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
34 THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
35 SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. Where there is a
36 dispute between the parties concerning the determinations, the court
37 shall adjourn the hearing as necessary to permit the sex offender or the
38 district attorney to obtain materials relevant to the determinations
39 from the state board of examiners of sex offenders or any state or local
40 facility, hospital, institution, office, agency, department or division.
41 Such materials may be obtained by subpoena if not voluntarily provided
42 to the requesting party. In making the determinations the court shall
43 review any victim's statement and any relevant materials and evidence
44 submitted by the sex offender and the district attorney and the recom-
45 mendation and any material submitted by the board, and may consider
46 reliable hearsay evidence submitted by either party, provided that it is
47 relevant to the determinations. If available, facts proven at trial or
48 elicited at the time of a plea of guilty shall be deemed established by
49 clear and convincing evidence and shall not be relitigated. The court
50 shall render an order setting forth its determinations and the findings
51 of fact and conclusions of law on which the determinations are based. A
52 copy of the order shall be submitted by the court to the division. Upon
53 application of either party, the court shall seal any portion of the
54 court file or record which contains material that is confidential under
55 any state or federal statute. Either party may appeal as of right from
56 the order pursuant to the provisions of articles fifty-five, fifty-six

1 and fifty-seven of the civil practice law and rules. Where counsel has
2 been assigned to represent the sex offender upon the ground that the sex
3 offender is financially unable to retain counsel, that assignment shall
4 be continued throughout the pendency of the appeal, and the person may
5 appeal as a poor person pursuant to article eighteen-B of the county
6 law.

7 S 5. Section 168-1 of the correction law is amended by adding a new
8 subdivision 5-a to read as follows:

9 5-A. THE BOARD SHALL DEVELOP GUIDELINES AND PROCEDURES TO ASSESS
10 WHETHER TO RECOMMEND THAT A SEX OFFENDER WHO STANDS CONVICTED OF A FELO-
11 NY SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION
12 ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. SUCH GUIDELINES SHALL INCLUDE
13 THE FOLLOWING:

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

16 (B) WHETHER A RESIDENCY RESTRICTION IS NECESSARY, BASED ON THE
17 OFFENDER'S CURRENT BEHAVIOR AND PRESENT AND PROSPECTIVE LIVING ARRANGE-
18 MENTS TO PROTECT PUBLIC SAFETY;

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

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

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

27 (F) WHETHER THE OFFENSE THAT REQUIRES THE OFFENDER TO REGISTER PURSU-
28 ANT TO THIS ARTICLE WAS COMMITTED AGAINST A MINOR CHILD.

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

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

54 S 7. Subdivision 7 of section 168-1 of the correction law, as amended
55 by chapter 11 of the laws of 2002, is amended to read as follows:

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

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

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

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

1 to the sex offender shall also advise the offender that he or she has a
2 right to a hearing prior to the court's determination, and that he or
3 she has the right to be represented by counsel at the hearing. If coun-
4 sel has been assigned to represent the offender at the determination
5 proceeding, the notice shall also provide the name, address and tele-
6 phone number of the assigned counsel. Where counsel has not been
7 assigned, the notice shall advise the sex offender that counsel will be
8 appointed if he or she is financially unable to retain counsel, and a
9 returnable form shall be enclosed in the court's notice to the sex
10 offender on which the sex offender may apply for assignment of counsel.
11 If the sex offender applies for assignment of counsel and the court
12 finds that the offender is financially unable to retain counsel, the
13 court shall assign counsel to represent the sex offender pursuant to
14 article eighteen-B of the county law. If the district attorney seeks a
15 determination that differs from the recommendation submitted by the
16 board, at least ten days prior to the determination proceeding the
17 district attorney shall provide to the court and the sex offender a
18 statement setting forth the determinations sought by the district attor-
19 ney together with the reasons for seeking such determinations. The court
20 shall allow the sex offender to appear and be heard. The state shall
21 appear by the district attorney, or his or her designee, who shall bear
22 the burden of proving the facts supporting the determinations sought by
23 clear and convincing evidence. Where there is a dispute between the
24 parties concerning the determinations, the court shall adjourn the hear-
25 ing as necessary to permit the sex offender or the district attorney to
26 obtain materials relevant to the determinations from the state board of
27 examiners of sex offenders or any state or local facility, hospital,
28 institution, office, agency, department or division. Such materials may
29 be obtained by subpoena if not voluntarily provided to the requesting
30 party. In making the determinations the court shall review any victim's
31 statement and any relevant materials and evidence submitted by the sex
32 offender and the district attorney and the recommendation and any mate-
33 rials submitted by the board, and may consider reliable hearsay evidence
34 submitted by either party, provided that it is relevant to the determi-
35 nations. Facts previously proven at trial or elicited at the time of
36 entry of a plea of guilty shall be deemed established by clear and
37 convincing evidence and shall not be relitigated. The court shall render
38 an order setting forth its determinations and the findings of fact and
39 conclusions of law on which the determinations are based. A copy of the
40 order shall be submitted by the court to the division. Upon application
41 of either party, the court shall seal any portion of the court file or
42 record which contains material that is confidential under any state or
43 federal statute. Either party may appeal as of right from the order
44 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
45 seven of the civil practice law and rules. Where counsel has been
46 assigned to represent the sex offender upon the ground that the sex
47 offender is financially unable to retain counsel, that assignment shall
48 be continued throughout the pendency of the appeal, and the person may
49 appeal as a poor person pursuant to article eighteen-B of the county
50 law.

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

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

1 2-A. ANY SEX OFFENDER SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
2 THIS ARTICLE MAY PETITION THE COURT WHICH IMPOSED SUCH RESTRICTION FOR
3 AN ORDER TERMINATING OR MODIFYING SUCH RESIDENCY RESTRICTION. THE PETI-
4 TION SHALL SET FORTH THE REASONS FOR SEEKING SUCH MODIFICATION OR TERMI-
5 NATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING THE FACTS
6 SUPPORTING THE REQUESTED MODIFICATION OR TERMINATION BY CLEAR AND
7 CONVINCING EVIDENCE. SUCH A PETITION SHALL NOT BE CONSIDERED MORE THAN
8 ANNUALLY. THE DISTRICT ATTORNEY AND THE SEX OFFENDER MAY APPEAL AS OF
9 RIGHT FROM AN ORDER ISSUED UNDER THIS SUBDIVISION PURSUANT TO THE
10 PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE
11 CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRE-
12 SENT THE SEX OFFENDER UPON THE GROUND THAT THE SEX OFFENDER IS FINAN-
13 Cially UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED
14 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY APPEAL AS A
15 POOR PERSON PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

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

18 3-A. PRIOR TO THE EXPIRATION OF A RESIDENCY RESTRICTION ORDERED PURSU-
19 ANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, THE DISTRICT
20 ATTORNEY MAY FILE A PETITION WITH THE SENTENCING COURT OR WITH THE COURT
21 WHICH ORDERED THE RESIDENCY RESTRICTION TO EXTEND THE DURATION OF SUCH
22 RESIDENCY RESTRICTION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION ONE
23 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. THE PETITION SHALL SET FORTH THE
24 REASONS FOR SEEKING TO EXTEND THE DURATION OF SUCH RESIDENCY
25 RESTRICTION. THE DISTRICT ATTORNEY SHALL BEAR THE BURDEN OF PROVING NEW
26 FACTS AND CIRCUMSTANCES THAT WARRANT THE REQUESTED EXTENSION, BY CLEAR
27 AND CONVINCING EVIDENCE. IN THE EVENT THAT THE DISTRICT ATTORNEY'S PETI-
28 TION IS GRANTED, THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM THE ORDER,
29 PURSUANT TO THE PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-
30 SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN
31 ASSIGNED TO REPRESENT THE OFFENDER UPON THE GROUND THAT HE OR SHE IS
32 FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED
33 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY PROCEED AS A
34 POOR PERSON, PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

35 S 11. Subdivision 4 of section 168-o of the correction law, as added
36 by chapter 453 of the laws of 1999, is amended to read as follows:

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

1 sex offender, the court shall, at least thirty days prior to ruling upon
2 the petition, provide a copy of the updated recommendation to the sex
3 offender, the sex offender's counsel and the district attorney and noti-
4 fy them, in writing, of the date set by the court for a hearing on the
5 petition. After reviewing the recommendation received from the board and
6 any relevant materials and evidence submitted by the sex offender and
7 the district attorney, the court may grant or deny the petition. The
8 court may also consult with the victim prior to making a determination
9 on the petition. The court shall render an order setting forth its
10 determination, and the findings of fact and conclusions of law on which
11 the determination is based. If the petition is granted, it shall be the
12 obligation of the court to submit a copy of its order to the division.
13 Upon application of either party, the court shall seal any portion of
14 the court file or record which contains material that is confidential
15 under any state or federal statute.

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

18 S 168-t. Penalty. Any sex offender required to register or to verify
19 pursuant to the provisions of this article who fails to register or
20 verify in the manner and within the time periods provided for in this
21 article shall be guilty of a class E felony upon conviction for the
22 first offense, and upon conviction for a second or subsequent offense
23 shall be guilty of a class D felony. Any sex offender who violates the
24 provisions of section one hundred sixty-eight-v of this article OR KNOW-
25 INGLY VIOLATES A RESIDENCY RESTRICTION IMPOSED PURSUANT TO SECTION ONE
26 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE shall be guilty of a class A
27 misdemeanor upon conviction for the first offense, and upon conviction
28 for a second or subsequent offense shall be guilty of a class D felony.
29 Any such failure to register or verify may also be the basis for revoca-
30 tion of parole pursuant to section two hundred fifty-nine-i of the exec-
31 utive law or the basis for revocation of probation pursuant to article
32 four hundred ten of the criminal procedure law.

33 S 13. Section 168-w of the correction law, as relettered by chapter
34 604 of the laws of 2005, is relettered section 168-x and a new section
35 168-w is added to read as follows:

36 S 168-w. RESIDENCY RESTRICTION FOR CERTAIN SEX OFFENDERS. 1. PURSUANT
37 TO SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-D, SUBDIVISION
38 TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-K AND SUBDIVISION TWO OF SECTION
39 ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE, WHEN THE COURT WHICH MAKES
40 THE DETERMINATION REGARDING THE LEVEL OF NOTIFICATION OF A SEX OFFENDER
41 CLASSIFIES SUCH OFFENDER AS A LEVEL 2 OR LEVEL 3 OFFENDER AND SUCH
42 OFFENDER WAS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT
43 TO THIS ARTICLE AND, WHERE APPLICABLE, THE BOARD HAS RECOMMENDED THAT
44 SUCH OFFENDER BE SUBJECT TO A RESIDENCY RESTRICTION, THE COURT MAY ORDER
45 THAT SUCH OFFENDER COMPLY WITH A RESIDENCY RESTRICTION ACCORDING TO THIS
46 SECTION. SUCH RESIDENCY RESTRICTION MAY BE IMPOSED ONLY AFTER THE COURT
47 HAS APPLIED THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION
48 ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE.

49 2. WHEN THE COURT DETERMINES THAT A RESIDENCY RESTRICTION IS NECESSARY
50 PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE COURT MAY ORDER THAT THE
51 SEX OFFENDER BE PROHIBITED FROM KNOWINGLY ESTABLISHING HIS OR HER PERMA-
52 NENT RESIDENCE WITHIN UP TO ONE THOUSAND FEET OF ANY SCHOOL GROUNDS, AS
53 THE TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION
54 220.00 OF THE PENAL LAW. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM
55 PERMANENT RESIDENCE SHALL MEAN THE PLACE WHERE THE OFFENDER MAINTAINS A
56 FIXED, PERMANENT AND PRINCIPAL HOME AND TO WHICH HE OR SHE, WHENEVER

1 TEMPORARILY AWAY, INTENDS TO RETURN. PERMANENT RESIDENCE SHALL NOT
2 INCLUDE TEMPORARY OR TRANSITIONAL HOUSING SUCH AS A SHELTER, RESIDENTIAL
3 TREATMENT PROGRAM, OR OTHER SIMILAR TEMPORARY OR TRANSIENT HOUSING.

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

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

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

22 (a) When imposing a sentence of probation or conditional discharge
23 upon a person convicted of an offense defined in article one hundred
24 thirty, two hundred thirty-five or two hundred sixty-three of this chap-
25 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim
26 of such offense was under the age of eighteen at the time of such
27 offense or such person has been designated a level three sex offender
28 pursuant to subdivision six of section [168-1] ONE HUNDRED SIXTY-EIGHT-L
29 of the correction law, the court shall require, as a mandatory condition
30 of such sentence, that such sentenced offender shall refrain from know-
31 ingly entering into or upon any school grounds, as that term is defined
32 in PARAGRAPH (A) OF subdivision fourteen of section 220.00 of this chap-
33 ter, or any other facility or institution primarily used for the care or
34 treatment of persons under the age of eighteen while one or more of such
35 persons under the age of eighteen are present, provided however, that
36 when such sentenced offender is a registered student or participant or
37 an employee of such facility or institution or entity contracting there-
38 with or has a family member enrolled in such facility or institution,
39 such sentenced offender may, with the written authorization of his or
40 her probation officer or the court and the superintendent or chief
41 administrator of such facility, institution or grounds, enter such
42 facility, institution or upon such grounds for the limited purposes
43 authorized by the probation officer or the court and superintendent or
44 chief officer. Nothing in this subdivision shall be construed as
45 restricting any lawful condition of supervision that may be imposed on
46 such sentenced offender.

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

49 14. notwithstanding any other provision of law to the contrary, where
50 a person serving a sentence for an offense defined in article one
51 hundred thirty, one hundred thirty-five or two hundred sixty-three of
52 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
53 the victim of such offense was under the age of eighteen at the time of
54 such offense or such person has been designated a level three sex offen-
55 der pursuant to subdivision six of section one hundred sixty-eight-1 of
56 the correction law, is released on parole or conditionally released

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

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

22 Upon conviction of any offense, where the court has not issued an
23 order of protection pursuant to section 530.12 of this article, the
24 court may, in addition to any other disposition, including a conditional
25 discharge or youthful offender adjudication, enter an order of
26 protection. Where a temporary order of protection was issued, the court
27 shall state on the record the reasons for issuing or not issuing an
28 order of protection. The duration of such an order shall be fixed by the
29 court and, in the case of a felony conviction, shall not exceed the
30 greater of: (i) eight years from the date of such conviction, or (ii)
31 eight years from the date of the expiration of the maximum term of an
32 indeterminate or the term of a determinate sentence of imprisonment
33 actually imposed; or in the case of a conviction for a class A misdemea-
34 nor, shall not exceed five years from the date of such conviction; or in
35 the case of a conviction for any other offense, shall not exceed two
36 years from the date of conviction, PROVIDED, HOWEVER, THAT IN THE CASE
37 OF A CONVICTION FOR AN OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER
38 IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED
39 SIXTY-EIGHT-A OF THE CORRECTION LAW, AND THE VICTIM OF SUCH OFFENSE WAS
40 UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, THE DURATION OF
41 AN ORDER OF PROTECTION ISSUED PURSUANT TO THIS SUBDIVISION MAY BE, BUT
42 SHALL NOT EXCEED, THE GREATER OF THE APPLICABLE DURATION PROVIDED FOR IN
43 THE FOREGOING PROVISIONS OF THIS SUBDIVISION OR UNTIL THE VICTIM OF SUCH
44 OFFENSE ATTAINS THE AGE OF EIGHTEEN. For purposes of determining the
45 duration of an order of protection entered pursuant to this subdivision,
46 a conviction shall be deemed to include a conviction that has been
47 replaced by a youthful offender adjudication. In addition to any other
48 conditions such an order may require that the defendant:

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

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

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

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

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

40 S 20. The district attorney may file a petition to seek the imposition
41 of a residency restriction for: (i) a sex offender classified as a level
42 2 or 3 offender who stands convicted of a felony which requires regis-
43 tration pursuant to article 6-C of the correction law and who is at
44 liberty on the effective date of this act; and (ii) a sex offender who
45 was convicted of a felony which requires registration pursuant to arti-
46 cle 6-C of the correction law prior to the effective date of this act
47 and is incarcerated in a state or local correctional facility on the
48 effective date of this act and is classified as a level 2 or 3 offender.
49 A petition filed pursuant to paragraph (i) of this section shall be
50 filed with the sentencing court or the court which made the determi-
51 nation regarding the level of notification of such offender within one
52 year of the effective date of this act. A petition filed pursuant to
53 paragraph (ii) of this section shall be filed with the sentencing court
54 or the court which made the determination regarding the level of notifi-
55 cation of such offender within one year of the release of such offender
56 from incarceration. The petition shall set forth the reasons for seeking

1 the residency restriction and the district attorney shall bear the
2 burden, by clear and convincing evidence, of proving the facts support-
3 ing the imposition of a residency restriction. Upon receipt of a peti-
4 tion submitted pursuant to this section, the court shall proceed in a
5 manner consistent with subdivision 4 of section 168-o of the correction
6 law. Applying the guidelines established in subdivision 5-a of section
7 168-1 of the correction law, the court shall determine whether to impose
8 a residency restriction on the offender named in the petition pursuant
9 to section 168-w of the correction law. In the event that the district
10 attorney's petition is granted, the sex offender may appeal as of right
11 from the order, pursuant to the provisions of articles 55, 56 and 57 of
12 the civil practice law and rules. Where counsel has been assigned to
13 represent the offender upon the ground that he or she is financially
14 unable to retain counsel, that assignment shall be continued throughout
15 the pendency of the appeal, and the person may proceed as a poor person,
16 pursuant to article eighteen-B of the county law.

17 S 21. This act shall take effect immediately, provided that the amend-
18 ments to the opening paragraph of subdivision 4 of section 530.13 of the
19 criminal procedure law made by section sixteen of this act shall be
20 subject to the expiration and reversion of such paragraph pursuant to
21 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
22 date the provisions of section seventeen of this act shall take effect.