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

5435

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. GIANARIS, HOYT, BENEDETTO, DESTITO, CUSICK, KOON, LAVINE, WEISENBERG, SCHIMMINGER, DelMONTE, FIELDS, SCHROEDER, BENJAMIN, MAYERSOHN, SPANO, GABRYSZAK -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, DIAZ, PHEFFER, REILLY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to requiring sex offenders to register for life and eliminating the petition for relief

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

Section 1. Section 168-h of the correction law, as amended by chapter 11 of the laws of 2002, subdivisions 1 and 2 as amended by chapter 1 of the laws of 2006, is amended to read as follows:

S 168-h. Duration of registration and verification. 1. The duration of registration and verification for a sex offender [who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification,] shall be annually for [a period of twenty years from the initial date of registration] LIFE.

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 offender, or who is classified as a level two or level three risk, shall be annually 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 calendar days with the local law enforcement agency having jurisdiction where the offender resides.

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

LBD05854-01-9

S 2. Section 168-o of the correction law, as amended by chapter 453 of the laws of 1999, subdivision 1 as amended by chapter 1 of the laws of 2006, subdivisions 2 and 3 as amended by chapter 11 of the laws of 2002, is amended to read as follows:

S 168-o. Petition for relief or modification. 1. [Any sex offender who is classified as a level two risk, and who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, who is required to register or verify pursuant to this article and who has been registered for a minimum period of thirty years may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court or by the court which made the determination regarding duration of registration and level of notification. The sex offender shall bear the burden of proving by clear and convincing evidence that his or her risk of repeat offense and threat to public safety is such that registration or verification is no longer necessary. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to this article upon conviction of any offense requiring registration in the future. Such a petition shall not be considered more than once every two years. In the event that the sex offender's petition for relief is granted, the district attorney may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

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

[3.] 2. The district attorney may file a petition to modify the level of notification for a sex offender with the sentencing court or with the court which made the determination regarding the level of notification OR WITH ANY COURT IN WHICH THE SEX OFFENDER HAS BEEN CONVICTED OF A NEW CRIME, where the sex offender (a) has been convicted of a new crime, or there has been a determination after a proceeding pursuant to section 410.70 of the criminal procedure law or section two hundred fifty-nine-i of the executive law that the sex offender has violated one or more conditions imposed as part of a sentence of a conditional discharge, probation, parole or post-release supervision for a designated crime, and (b) the conduct underlying the new crime or the violation is of a nature that indicates an increased risk of a repeat sex offense. The

petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The district attorney shall bear the burden of proving the facts supporting the requested modification, by clear and convincing evidence. In the event that the district attorney's petition is granted, the sex offender may appeal as of right from the order, pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the offender upon the ground that he or she is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may proceed as a poor person, pursuant to article eighteen-B of the county law.

[4.] 3. Upon receipt of a petition submitted pursuant to subdivision one[,] OR two [or three] of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the sex offender and shall provide a copy of the petition to the other party. The court shall also advise the sex offender that he or she has the right to be represented by counsel at the hearing and counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated recommendation the board shall notify the sex offender and his or her counsel that the offender's case is under review and he or she is permitted to submit to the board any information relevant to the review. The board's updated recommendation on the sex offender shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a sex offender, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the sex offender, the sex offender's counsel and the district attorney and notify them, in writing, of the date set by the court for a hearing on the petition. After reviewing the recommendation received from the board and any relevant materials and evidence submitted by the sex offender and the district attorney, the court may grant or deny the petition. The court may also consult with the victim prior to making a determination on the petition. The court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. If the petition is granted, it shall be the obligation of the court to submit a copy of its order to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute.

S 3. This act shall take effect immediately and shall apply to all sex offenders registered or required to register immediately prior to the effective date of this act, or who are required to register on or after such date.