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

297

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:

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

5. EVERY SEX OFFENDER HAVING BEEN DESIGNATED A LEVEL THREE RISK SHALL, IN ADDITION TO ANY OTHER SENTENCES IMPOSED UPON SUCH OFFENDER, BE SENTENCED TO PROBATION FOR LIFE TO BE SERVED AFTER THE TERMINATION OF ALL SUCH OTHER SENTENCES.

S 2. The section heading of section 168-f of the correction law, as amended by chapter 453 of the laws of 1999, is amended and a new subdivision 7 is added to read as follows:

Duty to register and to verify; SUBMISSION TO A POLYGRAPHIC EXAMINATION.

7. EVERY SEX OFFENDER WHO HAS BEEN GIVEN A LEVEL THREE DESIGNATION SHALL WHILE ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION SUBMIT TO A POLYGRAPHIC EXAMINATION ADMINISTERED BY HIS OR HER PAROLE OFFICER, AT LEAST ONCE A YEAR, AND SHALL WHILE ON PROBATION SUBMIT TO A POLYGRAPHIC EXAMINATION ADMINISTERED BY HIS OR HER PROBATION OFFICER, AT LEAST ONCE A YEAR. EVERY POLYGRAPHIC EXAMINATION REQUIRED TO BE ADMINISTERED PURSUANT TO THIS SUBDIVISION SHALL BE CONDUCTED PURSUANT TO THE RULES AND REGULATIONS OF THE DIVISION.

S 3. Section 168-h of the correction law is amended by adding a new subdivision 4 to read as follows:

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

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

S 4. 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 OR WHO FAILS TO SUBMIT TO A POLYGRAPHIC EXAMINATION IN THE MANNER AND WITH THE FREQUENCY REQUIRED BY SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-EIGHT-F 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] OR SUBMIT TO A POLYGRAPHIC EXAMINATION SHALL 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.

S 5. Section 60.01 of the penal law is amended by adding a new subdivision 5 to read as follows:

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

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

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

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

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

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

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

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

(B) THE PROVISIONS OF SUBDIVISION SIX OF SECTION 420.10 OF THE CRIMINAL PROCEDURE LAW SHALL GOVERN FOR PURPOSES OF COLLECTION OF THE ADMINISTRATIVE FEE.

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

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

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

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

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

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

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