

3233

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sens. FLANAGAN, ALESI, LANZA, LIBOUS, MAZIARZ, SALAND, VOLKER, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to disclosure of sexual offender information related to a patient or client, and to amend the correction law, in relation to inclusion of certain persons within the provisions of the sex offender registration act who have had pleas accepted, or who have had verdicts entered with respect to them, of not responsible by reason of mental disease or defect

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

1 Section 1. Paragraph 9 of subdivision (c) of section 33.13 of the  
2 mental hygiene law is amended by adding a new subparagraph (ix) to read  
3 as follows:  
4 (IX) APPROPRIATE PERSONS AND ENTITIES PURSUANT TO ARTICLE SIX-C OF THE  
5 CORRECTION LAW, WHEN DISCLOSURE IS LIMITED TO SEXUAL OFFENDER REGISTRA-  
6 TION INFORMATION NECESSARY TO ENSURE THE WELFARE AND SAFETY OF OTHERS.  
7 S 2. Subdivision 1 of section 168-a of the correction law, as added by  
8 chapter 192 of the laws of 1995, is amended to read as follows:  
9 1. "Sex offender" includes any person who is convicted of any of the  
10 offenses set forth in subdivision two or three of this section.  
11 Convictions that result from or are connected with the same act, or  
12 result from offenses committed at the same time, shall be counted for  
13 the purpose of this article as one conviction. Any conviction set aside  
14 pursuant to law is not a conviction for purposes of this article. FOR  
15 PURPOSES OF THIS ARTICLE, THE TERM "SEX OFFENDER" SHALL BE DEEMED TO  
16 INCLUDE A PERSON WHO HAS HAD A CRIMINAL ACTION COMMENCED AGAINST THEM BY  
17 THE FILING OF AN ACCUSATORY INSTRUMENT, A SUPERIOR COURT INFORMATION, OR  
18 INDICTMENT WHICH INCLUDES A CHARGE FOR THE COMMISSION OF ANY OF THE  
19 OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF THIS SECTION AND, WITH

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

LBD06529-02-9

1 RESPECT TO SUCH OFFENSE OR OFFENSES, HAS ENTERED A PLEA, WHICH IS  
2 ACCEPTED, OR HAS HAD A VERDICT ENTERED AGAINST SUCH PERSON, OF NOT  
3 RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT. ANY SUCH PLEA OR  
4 VERDICT WITH RESPECT TO SUCH OFFENSE OR OFFENSES SHALL BE CONSIDERED A  
5 CONVICTION OF ALL OF THE OFFENSES SO CHARGED, OR THAT REMAIN AS CHARGED  
6 OR OTHERWISE EXIST AT THE TIME OF THE ENTRY OF SUCH PLEA OR VERDICT, AS  
7 MAY BE APPLICABLE, THAT FALL WITHIN THE DEFINITION OF SEX OFFENSE OR  
8 SEXUALLY VIOLENT OFFENSE AS SET FORTH IN SUBDIVISION TWO OR THREE OF  
9 THIS SECTION AND SHALL BE DEEMED TO BE A CONVICTION FOR ALL OTHER  
10 PURPOSES OF THIS ARTICLE.

11 S 3. Paragraph (c) of subdivision 1 of section 168-b of the correction  
12 law, as amended by chapter 11 of the laws of 2002, is amended to read as  
13 follows:

14 (c) A description of the offense for which the sex offender was  
15 convicted, the date of conviction and the sentence imposed. IN THE EVENT  
16 THAT SUCH CONVICTION IS DEEMED TO EXIST FROM THE ENTRY AND ACCEPTANCE OF  
17 A PLEA, OR THE ENTRY OF A VERDICT, OF NOT RESPONSIBLE BY REASON OF  
18 MENTAL DISEASE OR DEFECT AS DESCRIBED IN SUBDIVISION ONE OF SECTION ONE  
19 HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE, THE DATE OF CONVICTION SHALL BE  
20 DEEMED TO BE THE DATE THE PLEA WAS ACCEPTED BY THE COURT, OR THE DATE A  
21 VERDICT WAS ENTERED, OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR  
22 DEFECT. IN LIEU OF A DESCRIPTION OF THE SENTENCE IMPOSED WHERE A  
23 CONVICTION IS DEEMED TO EXIST AS A RESULT OF SUCH PLEA OR VERDICT, THERE  
24 SHALL BE ENTERED A DESCRIPTION OF ALL PROCEEDINGS THAT HAVE OCCURRED  
25 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-  
26 NAL PROCEDURE LAW.

27 S 4. Section 168-d of the correction law, as amended by chapter 11 of  
28 the laws of 2002, paragraph (a) of subdivision 1 as amended by chapter  
29 69 of the laws of 2003, paragraph (b) of subdivision 1 as amended by  
30 chapter 74 of the laws of 2007, subdivision 2 as amended and subdivision  
31 4 as added by chapter 684 of the laws of 2005, is amended to read as  
32 follows:

33 S 168-d. Duties of the court. 1. (a) Except as provided in paragraphs  
34 (b) and (c) of this subdivision, upon conviction of any of the offenses  
35 set forth in subdivision two or three of section one hundred sixty-  
36 eight-a of this article the court shall certify that the person is a sex  
37 offender and shall include the certification in the order of commitment,  
38 if any, and judgment of conviction OR IN AN ORDER ISSUED PURSUANT TO THE  
39 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE  
40 LAW, except as provided in paragraph (e) of subdivision two of section  
41 one hundred sixty-eight-a of this article. The court shall also advise  
42 the sex offender of his or her duties under this article. Failure to  
43 include the certification in the order of commitment [or], the judgment  
44 of conviction, OR IN AN ORDER ISSUED PURSUANT TO THE PROVISIONS OF ARTI-  
45 CLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW shall not relieve  
46 a sex offender of the obligations imposed by this article.

47 (b) Where a defendant stands convicted of an offense defined in para-  
48 graph (b) of subdivision two of section one hundred sixty-eight-a of  
49 this article or where the defendant was convicted of patronizing a pros-  
50 titute in the third degree under section 230.04 of the penal law and the  
51 defendant controverts an allegation that the victim of such offense was  
52 less than eighteen years of age or, in the case of a conviction under  
53 section 230.04 of the penal law, less than seventeen years of age, the  
54 court, without a jury, shall, prior to sentencing OR ISSUING AN ORDER  
55 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-  
56 NAL PROCEDURE LAW, conduct a hearing, and the people may prove by clear

1 and convincing evidence that the victim was less than eighteen years of  
2 age or less than seventeen years of age, as applicable, by any evidence  
3 admissible under the rules applicable to a trial of the issue of guilt.  
4 The court in addition to such admissible evidence may also consider  
5 reliable hearsay evidence submitted by either party provided that it is  
6 relevant to the determination of the age of the victim. Facts concerning  
7 the age of the victim proven at trial or ascertained at the time of  
8 entry of a plea of guilty, OR FACTS CONCERNING THE AGE OF THE VICTIM  
9 ASCERTAINED AT THE TIME A PLEA IS ENTERED, WHICH IS ACCEPTED BY THE  
10 COURT, OR AT A TRIAL WHERE VERDICT IS ENTERED AGAINST SUCH PERSON, OF  
11 NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT, shall be deemed  
12 established by clear and convincing evidence and shall not be reliti-  
13 gated. At the conclusion of the hearing, or if the defendant does not  
14 controvert an allegation that the victim of the offense was less than  
15 eighteen years of age or less than seventeen years of age, as applica-  
16 ble, the court must make a finding and enter an order setting forth the  
17 age of the victim. If the court finds that the victim of such offense  
18 was under eighteen years of age or under seventeen years of age, as  
19 applicable, the court shall certify the defendant as a sex offender, the  
20 provisions of paragraph (a) of this subdivision shall apply and the  
21 defendant shall register with the division in accordance with the  
22 provisions of this article.

23 (c) Where a defendant stands convicted of an offense defined in para-  
24 graph (c) of subdivision two of section one hundred sixty-eight-a of  
25 this article and the defendant controverts an allegation that the  
26 defendant was previously convicted of a sex offense or a sexually  
27 violent offense defined in this article or has previously been convicted  
28 of or convicted for an attempt to commit any of the provisions of  
29 section 130.52 or 130.55 of the penal law, the court, without a jury,  
30 shall, prior to sentencing OR ISSUING AN ORDER PURSUANT TO THE  
31 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE  
32 LAW, conduct a hearing, and the people may prove by clear and convincing  
33 evidence that the defendant was previously convicted of a sex offense or  
34 a sexually violent offense defined in this article or has previously  
35 been convicted of or convicted for an attempt to commit any of the  
36 provisions of section 130.52 or 130.55 of the penal law, by any evidence  
37 admissible under the rules applicable to a trial of the issue of guilt.  
38 The court in addition to such admissible evidence may also consider  
39 reliable hearsay evidence submitted by either party provided that it is  
40 relevant to the determination of whether the defendant was previously  
41 convicted of a sex offense or a sexually violent offense defined in this  
42 article or has previously been convicted of or convicted for an attempt  
43 to commit any of the provisions of section 130.52 or 130.55 of the penal  
44 law. At the conclusion of the hearing, or if the defendant does not  
45 controvert an allegation that the defendant was previously convicted of  
46 a sex offense or a sexually violent offense defined in this article or  
47 has previously been convicted of or convicted for an attempt to commit  
48 any of the provisions of section 130.52 or 130.55 of the penal law, the  
49 court must make a finding and enter an order determining whether the  
50 defendant was previously convicted of a sex offense or a sexually  
51 violent offense defined in this article or has previously been convicted  
52 of or convicted for an attempt to commit any of the provisions of  
53 section 130.52 or 130.55 of the penal law. If the court finds that the  
54 defendant has such a previous conviction, the court shall certify the  
55 defendant as a sex offender, the provisions of paragraph (a) of this

1 subdivision shall apply and the defendant shall register with the divi-  
2 sion in accordance with the provisions of this article.

3 2. Any sex offender, who is released on probation or discharged upon  
4 payment of a fine, conditional discharge or unconditional discharge, OR  
5 IS RELEASED OR DISCHARGED PURSUANT TO THE PROVISIONS OF ARTICLE THREE  
6 HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW shall, prior to such  
7 release or discharge, be informed of his or her duty to register under  
8 this article by the court in which he or she was convicted OR BY THE  
9 COURT ISSUING AN ORDER PURSUANT TO THE PROVISIONS OF ARTICLE THREE  
10 HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW. At the time sentence is  
11 imposed OR AT THE TIME THE COURT ISSUES AN ORDER PURSUANT TO THE  
12 PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMINAL PROCEDURE  
13 LAW, such sex offender shall register with the division on a form  
14 prepared by the division. The court shall require the sex offender to  
15 read and sign such form and to complete the registration portion of such  
16 form. The court shall on such form obtain the address where the sex  
17 offender expects to reside upon his or her release, and the name and  
18 address of any institution of higher education he or she expects to be  
19 employed by, enrolled in, attending or employed, whether for compen-  
20 sation or not, and whether he or she expects to reside in a facility  
21 owned or operated by such an institution, AND, IF APPLICABLE A COPY OF  
22 THE ORDER ISSUED, AND DESCRIPTION OF ALL PROCEEDINGS THAT HAVE OCCURRED,  
23 PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY OF THE CRIMI-  
24 NAL PROCEDURE LAW and shall report such information to the division. The  
25 court shall give one copy of the form to the sex offender and shall send  
26 two copies to the division which shall forward the information to the  
27 law enforcement agencies having jurisdiction. The court shall also noti-  
28 fy the district attorney and the sex offender of the date of the deter-  
29 mination proceeding to be held pursuant to subdivision three of this  
30 section, which shall be held at least forty-five days after such notice  
31 is given. This notice shall include the following statement or a  
32 substantially similar statement: "This proceeding is being held to  
33 determine whether you will be classified as a level 3 offender (risk of  
34 repeat offense is high), a level 2 offender (risk of repeat offense is  
35 moderate), or a level 1 offender (risk of repeat offense is low), or  
36 whether you will be designated as a sexual predator, a sexually violent  
37 offender or a predicate sex offender, which will determine how long you  
38 must register as a sex offender and how much information can be provided  
39 to the public concerning your registration. If you fail to appear at  
40 this proceeding, without sufficient excuse, it shall be held in your  
41 absence. Failure to appear may result in a longer period of registration  
42 or a higher level of community notification because you are not present  
43 to offer evidence or contest evidence offered by the district attorney."  
44 The court shall also advise the sex offender that he or she has a right  
45 to a hearing prior to the court's determination, that he or she has the  
46 right to be represented by counsel at the hearing and that counsel will  
47 be appointed if he or she is financially unable to retain counsel. If  
48 the sex offender applies for assignment of counsel to represent him or  
49 her at the hearing and counsel was not previously assigned to represent  
50 the sex offender in the underlying criminal action, the court shall  
51 determine whether the offender is financially unable to retain counsel.  
52 If such a finding is made, the court shall assign counsel to represent  
53 the sex offender pursuant to article eighteen-B of the county law. Where  
54 the court orders a sex offender released on probation, such order must  
55 include a provision requiring that he or she comply with the require-  
56 ments of this article. Where such sex offender violates such provision,

1 probation may be immediately revoked in the manner provided by article  
2 four hundred ten of the criminal procedure law.

3 3. For sex offenders released on probation or discharged upon payment  
4 of a fine, conditional discharge or unconditional discharge, OR RELEASED  
5 OR DISCHARGED PURSUANT TO THE PROVISIONS OF ARTICLE THREE HUNDRED THIRTY  
6 OF THE CRIMINAL PROCEDURE LAW, it shall be the duty of the court apply-  
7 ing the guidelines established in subdivision five of section one  
8 hundred sixty-eight-1 of this article to determine the level of notifi-  
9 cation pursuant to subdivision six of section one hundred sixty-eight-1  
10 of this article and whether such sex offender shall be designated a  
11 sexual predator, sexually violent offender, or predicate sex offender as  
12 defined in subdivision seven of section one hundred sixty-eight-a of  
13 this article. At least fifteen days prior to the determination proceed-  
14 ing, the district attorney shall provide to the court and the sex offen-  
15 der a written statement setting forth the determinations sought by the  
16 district attorney together with the reasons for seeking such determi-  
17 nations. The court shall allow the sex offender to appear and be heard.  
18 The state shall appear by the district attorney, or his or her designee,  
19 who shall bear the burden of proving the facts supporting the determi-  
20 nations sought by clear and convincing evidence. Where there is a  
21 dispute between the parties concerning the determinations, the court  
22 shall adjourn the hearing as necessary to permit the sex offender or the  
23 district attorney to obtain materials relevant to the determinations  
24 from any state or local facility, hospital, institution, office, agency,  
25 department or division. Such materials may be obtained by subpoena if  
26 not voluntarily provided to the requesting party. In making the determi-  
27 nations, the court shall review any victim's statement and any relevant  
28 materials and evidence submitted by the sex offender and the district  
29 attorney and the court may consider reliable hearsay evidence submitted  
30 by either party provided that it is relevant to the determinations.  
31 Facts previously proven at trial or elicited at the time of entry of a  
32 plea of guilty OR PREVIOUSLY ELICITED AT THE TIME A PLEA IS ENTERED,  
33 WHICH IS ACCEPTED BY THE COURT, OR ARE PROVEN AT A TRIAL WHERE A VERDICT  
34 HAS BEEN ENTERED, OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR  
35 DEFECT shall be deemed established by clear and convincing evidence and  
36 shall not be relitigated. The court shall render an order setting forth  
37 its determinations and the findings of fact and conclusions of law on  
38 which the determinations are based. A copy of the order shall be submit-  
39 ted by the court to the division. Upon application of either party, the  
40 court shall seal any portion of the court file or record which contains  
41 material that is confidential under any state or federal statute. Either  
42 party may appeal as of right from the order pursuant to the provisions  
43 of articles fifty-five, fifty-six and fifty-seven of the civil practice  
44 law and rules. Where counsel has been assigned to represent the sex  
45 offender upon the ground that the sex offender is financially unable to  
46 retain counsel, that assignment shall be continued throughout the  
47 pendency of the appeal, and the person may appeal as a poor person  
48 pursuant to article eighteen-B of the county law.

49 4. If a sex offender, having been given notice, including the time and  
50 place of the determination proceeding in accordance with this section,  
51 fails to appear at this proceeding, without sufficient excuse, the court  
52 shall conduct the hearing and make the determinations in the manner set  
53 forth in subdivision three of this section.

54 S 5. Section 29.16 of the mental hygiene law, as amended by chapter  
55 465 of the laws of 1992, is amended to read as follows:

56 S 29.16 Discharge OR RELEASE; certain cases.

1 (A) The director of a facility shall, with respect to any patient  
2 admitted to such facility pursuant to section five hundred nine of the  
3 executive law or 353.4 of the family court act and article nine or  
4 fifteen of this chapter, give immediate written notice to the [director  
5 of the division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES and to  
6 the mental hygiene legal service when any such patient leaves the facil-  
7 ity without the consent of its director. Such patient shall not be  
8 discharged so long as there is a valid order of the family court placing  
9 such person with the [division for youth] OFFICE OF CHILDREN AND FAMILY  
10 SERVICES, except in accordance with the provisions of section five  
11 hundred nine of the executive law or section 353.4 of the family court  
12 act.

13 (B) NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY, PRIOR TO  
14 THE DISCHARGE OR RELEASE, INCLUDING A COURT ORDERED RELEASE, FROM A  
15 DEPARTMENT FACILITY OF A PATIENT WHO IS A SEX OFFENDER REQUIRED TO  
16 REGISTER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW, THE DIRECTOR  
17 OF A FACILITY SHALL CONTACT THE DIVISION OF CRIMINAL JUSTICE SERVICES  
18 (HEREIN THE "DIVISION") TO DETERMINE WHETHER OR NOT SUCH PATIENT HAS  
19 REGISTERED A CHANGE OF ADDRESS PURSUANT TO THE PROVISIONS OF SUBDIVISION  
20 FOUR OF SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW. IN THE  
21 EVENT THAT THE DIRECTOR DETERMINES THAT SUCH PATIENT HAS FAILED TO  
22 PROVIDE THE DIVISION WITH THE NOTIFICATION OF CHANGE OF ADDRESS WHICH  
23 WILL PROVIDE THE DIVISION WITH THE PATIENT'S INTENDED NEW ADDRESS WHICH  
24 WILL TAKE EFFECT UPON SUCH DISCHARGE OR RELEASE, THE DIRECTOR IMMEDIATE-  
25 LY SHALL NOTIFY THE PATIENT AND THE MENTAL HYGIENE LEGAL SERVICE OF THE  
26 REQUIREMENTS OF REGISTERING A CHANGE OF ADDRESS PURSUANT TO SUCH  
27 PROVISIONS OF THE CORRECTION LAW. NOTWITHSTANDING THE PROVISIONS OF  
28 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW, THE DIRECTOR OF  
29 A FACILITY IS AUTHORIZED TO DELAY THE IMPLEMENTATION OF THE DISCHARGE OR  
30 RELEASE, INCLUDING A COURT ORDERED RELEASE, OF SUCH PATIENT FOR A PERIOD  
31 OF UP TO TEN DAYS OR UNTIL THE DATE THAT SUCH PATIENT COMPLIES WITH THE  
32 REGISTRATION REQUIREMENTS OF SUCH PROVISIONS OF THE CORRECTION LAW,  
33 WHICHEVER OCCURS FIRST.

34 S 6. Section 29.17 of the mental hygiene law is amended to read as  
35 follows:

36 S 29.17 Clothing and money to be furnished patients discharged or  
37 released.

38 No patient shall be discharged or released from a department facility  
39 without suitable clothing adapted to the season in which he OR SHE is  
40 discharged or released; and if it cannot be otherwise obtained, the  
41 facility shall upon the order of the director, or of the commissioner,  
42 as the case may be, furnish the same, and money not exceeding fifty  
43 dollars, to defray his OR HER expenses until he OR SHE can reach his OR  
44 HER relatives or friends, or find employment to earn a subsistence. THE  
45 FACILITY, UPON THE ORDER OF THE DIRECTOR, OR OF THE COMMISSIONER, AS THE  
46 CASE MAY BE, SHALL FURNISH A PATIENT, WHO IS A SEX OFFENDER AND IS  
47 REQUIRED TO REGISTER A CHANGE OF ADDRESS PURSUANT TO SUBDIVISION FOUR OF  
48 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW, WITH MONEY, IN  
49 AN AMOUNT EQUAL TO THE STATUTORY AMOUNT CHARGED BY THE DIVISION OF CRIM-  
50 INAL JUSTICE SERVICES TO DEFRAY THE EXPENSE OF REGISTERING HIS OR HER  
51 CHANGE OF ADDRESS WITH THE DIVISION, AT OR PRIOR TO THE DATE OF SUCH  
52 DISCHARGE OR RELEASE.

53 S 7. Paragraph a of subdivision 2 of section 168-b of the correction  
54 law, as amended by chapter 645 of the laws of 2005, is amended to read  
55 as follows:

1 a. The division is authorized to make the registry available to any  
2 regional or national registry of sex offenders for the purpose of shar-  
3 ing information OR TO THE COMMISSIONER OF MENTAL HEALTH OR THE COMMIS-  
4 SIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. The divi-  
5 sion shall accept files from any regional or national registry of sex  
6 offenders and shall make such files available when requested pursuant to  
7 the provisions of this article.

8 S 8. This act shall take effect on the one hundred eightieth day after  
9 it shall have become a law.