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I N S E N A T E

May 20, 2010

Introduced by Sen. FOLEY -- (at request of the Governor) -- 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 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,

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

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

4 (e) a conviction of OR A CONVICTION FOR AN ATTEMPT TO COMMIT any of
5 the provisions of subdivision two, three or four of section 250.45 of
6 the penal law, unless upon motion by the defendant, the trial court,
7 having regard to the nature and circumstances of the crime and to the
8 history and character of the defendant, is of the opinion that registra-
9 tion would be unduly harsh and inappropriate.

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

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

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

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

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

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

1 local correctional facility, hospital or institution and shall imme-
2 diately recommence on the date of the sex offender's release.

3 S 6. Paragraph (b) of subdivision 6 of section 168-1 of the correction
4 law, as amended by chapter 106 of the laws of 2006, is amended to read
5 as follows:

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

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

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

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

1 shall be excluded from the subdirectory distributed for purposes of
2 public access. The subdirectory provided for herein shall be updated
3 monthly to maintain its efficiency and usefulness and shall be computer
4 accessible.] Such subdirectory shall be made available at all times on
5 the internet via the division homepage. Any person may apply to the
6 division to receive automated e-mail notifications whenever a new or
7 updated subdirectory registration occurs in a geographic area specified
8 by such person. The division shall furnish such service at no charge to
9 such person, who shall request e-mail notification by county and/or zip
10 code on forms developed and provided by the division. E-mail notifica-
11 tion is limited to three geographic areas per e-mail account.

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

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

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

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

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

54 3-a. (A) A sex offender registration form, sex offender registration
55 continuation/supplemental form, sex offender registry address verifica-
56 tion form, sex offender change of address form or a copy of such form

1 maintained by the division of criminal justice services concerning an
2 individual who is the subject of a grand jury proceeding, may, when
3 certified by a person designated by the commissioner of the division of
4 criminal justice services as the person to certify such records, as a
5 true copy thereof, be received in such grand jury proceeding as evidence
6 of the facts stated therein.

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

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

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

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

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

54 S 13. This act shall take effect immediately; provided, however, that
55 the amendments to subparagraph (ii) of paragraph (d) of subdivision 2 of
56 section 168-a of the correction law, made by section two of this act

1 shall apply to persons who committed a crime in another jurisdiction
2 prior to the effective date of this act who establish a residence in
3 this state on or after the effective date of this act.