

3655

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. AUBRY, LENTOL, SPANO, REILLY, RAMOS, TITONE,  
CUSICK, DESTITO, GABRYSZAK -- Multi-Sponsored by -- M. of A. LUPARDO  
-- 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 ASSEM-  
BLY, 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 13 to read as follows:

12 13. 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:

22 2. Any sex offender, who is released on probation or discharged upon  
23 payment of a fine, conditional discharge or unconditional discharge

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

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

51 3. For sex offenders released on probation or discharged upon payment  
52 of a fine, conditional discharge or unconditional discharge, it shall be  
53 the duty of the court applying the guidelines established in subdivision  
54 five of section one hundred sixty-eight-1 of this article to determine  
55 the level of notification pursuant to subdivision six of section one  
56 hundred sixty-eight-1 of this article [and], whether such sex offender

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

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

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

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

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

1 offender is financially unable to retain counsel, that assignment shall  
2 be continued throughout the pendency of the appeal, and the person may  
3 appeal as a poor person pursuant to article eighteen-B of the county  
4 law.

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

7 5-A. THE BOARD SHALL DEVELOP GUIDELINES AND PROCEDURES TO ASSESS  
8 WHETHER TO RECOMMEND THAT A SEX OFFENDER WHO STANDS CONVICTED OF A FELO-  
9 NY SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION  
10 ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. SUCH GUIDELINES SHALL INCLUDE  
11 THE FOLLOWING:

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

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

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

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

23 (E) THE ABILITY OF THE OFFENDER TO FIND GAINFUL AND STABLE EMPLOYMENT;  
24 AND

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

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

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

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

54 7. Upon request by the court, pursuant to section one hundred sixty-  
55 eight-o of this article, the board shall provide an updated report  
56 pertaining to the sex offender petitioning for relief of the duty to

1 register [or], for a modification of his or her level of notification OR  
2 FOR MODIFICATION OR TERMINATION OF A RESIDENCY RESTRICTION IMPOSED BY  
3 THE SENTENCING COURT.

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

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

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

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

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

51 Petition for relief or modification OF LEVEL OF NOTIFICATION AND/OR  
52 RESIDENCY RESTRICTION.

53 2-A. ANY SEX OFFENDER SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO  
54 THIS ARTICLE MAY PETITION THE COURT WHICH IMPOSED SUCH RESTRICTION FOR  
55 AN ORDER TERMINATING OR MODIFYING SUCH RESIDENCY RESTRICTION. THE PETI-  
56 TION SHALL SET FORTH THE REASONS FOR SEEKING SUCH MODIFICATION OR TERMI-

1 NATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING THE FACTS  
2 SUPPORTING THE REQUESTED MODIFICATION OR TERMINATION BY CLEAR AND  
3 CONVINCING EVIDENCE. SUCH A PETITION SHALL NOT BE CONSIDERED MORE THAN  
4 ANNUALLY. THE DISTRICT ATTORNEY AND THE SEX OFFENDER MAY APPEAL AS OF  
5 RIGHT FROM AN ORDER ISSUED UNDER THIS SUBDIVISION PURSUANT TO THE  
6 PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE  
7 CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRESENT  
8 THE SEX OFFENDER UPON THE GROUND THAT THE SEX OFFENDER IS FINAN-  
9 CIALY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED  
10 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY APPEAL AS A  
11 POOR PERSON PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

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

14 3-A. PRIOR TO THE EXPIRATION OF A RESIDENCY RESTRICTION ORDERED PURSU-  
15 ANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, THE DISTRICT  
16 ATTORNEY MAY FILE A PETITION WITH THE SENTENCING COURT OR WITH THE COURT  
17 WHICH ORDERED THE RESIDENCY RESTRICTION TO EXTEND THE DURATION OF SUCH  
18 RESIDENCY RESTRICTION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION ONE  
19 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. THE PETITION SHALL SET FORTH THE  
20 REASONS FOR SEEKING TO EXTEND THE DURATION OF SUCH RESIDENCY  
21 RESTRICTION. THE DISTRICT ATTORNEY SHALL BEAR THE BURDEN OF PROVING NEW  
22 FACTS AND CIRCUMSTANCES THAT WARRANT THE REQUESTED EXTENSION, BY CLEAR  
23 AND CONVINCING EVIDENCE. IN THE EVENT THAT THE DISTRICT ATTORNEY'S PETI-  
24 TION IS GRANTED, THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM THE ORDER,  
25 PURSUANT TO THE PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-  
26 SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN  
27 ASSIGNED TO REPRESENT THE OFFENDER UPON THE GROUND THAT HE OR SHE IS  
28 FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED  
29 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY PROCEED AS A  
30 POOR PERSON, PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

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

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

1 petition. After reviewing the recommendation received from the board and  
2 any relevant materials and evidence submitted by the sex offender and  
3 the district attorney, the court may grant or deny the petition. The  
4 court may also consult with the victim prior to making a determination  
5 on the petition. The court shall render an order setting forth its  
6 determination, and the findings of fact and conclusions of law on which  
7 the determination is based. If the petition is granted, it shall be the  
8 obligation of the court to submit a copy of its order to the division.  
9 Upon application of either party, the court shall seal any portion of  
10 the court file or record which contains material that is confidential  
11 under any state or federal statute.

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

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

29 S 13. Section 168-w of the correction law, as relettered by chapter  
30 604 of the laws of 2005, is relettered section 168-x and a new section  
31 168-w is added to read as follows:

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

45 2. WHEN THE COURT DETERMINES THAT A RESIDENCY RESTRICTION IS NECESSARY  
46 PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE COURT MAY ORDER THAT THE  
47 SEX OFFENDER BE PROHIBITED FROM KNOWINGLY ESTABLISHING HIS OR HER PERMA-  
48 NENT RESIDENCE WITHIN UP TO ONE THOUSAND FEET OF ANY SCHOOL GROUNDS, AS  
49 THE TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION  
50 220.00 OF THE PENAL LAW. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM  
51 PERMANENT RESIDENCE SHALL MEAN THE PLACE WHERE THE OFFENDER MAINTAINS A  
52 FIXED, PERMANENT AND PRINCIPAL HOME AND TO WHICH HE OR SHE, WHENEVER  
53 TEMPORARILY AWAY, INTENDS TO RETURN. PERMANENT RESIDENCE SHALL NOT  
54 INCLUDE TEMPORARY OR TRANSITIONAL HOUSING SUCH AS A SHELTER, RESIDENTIAL  
55 TREATMENT PROGRAM, OR OTHER SIMILAR TEMPORARY OR TRANSIENT HOUSING.

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

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

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

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

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

46 14. notwithstanding any other provision of law to the contrary, where  
47 a person serving a sentence for an offense defined in article one  
48 hundred thirty, one hundred thirty-five or two hundred sixty-three of  
49 the penal law or section 255.25, 255.26 or 255.27 of the penal law and  
50 the victim of such offense was under the age of eighteen at the time of  
51 such offense or such person has been designated a level three sex offen-  
52 der pursuant to subdivision six of section one hundred sixty-eight-1 of  
53 the correction law, is released on parole or conditionally released  
54 pursuant to subdivision one or two of this section, the board shall  
55 require, as a mandatory condition of such release, that such sentenced  
56 offender shall refrain from knowingly entering into or upon any school

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

16 S 16. The opening paragraph of subdivision 4 of section 530.13 of the  
17 criminal procedure law, as amended by chapter 476 of the laws of 2009,  
18 is amended to read as follows:

19 Upon conviction of any offense, where the court has not issued an  
20 order of protection pursuant to section 530.12 of this article, the  
21 court may, in addition to any other disposition, including a conditional  
22 discharge or youthful offender adjudication, enter an order of  
23 protection. Where a temporary order of protection was issued, the court  
24 shall state on the record the reasons for issuing or not issuing an  
25 order of protection. The duration of such an order shall be fixed by the  
26 court and; (A) in the case of a felony conviction, shall not exceed the  
27 greater of: (i) eight years from the date of such conviction, or (ii)  
28 eight years from the date of the expiration of the maximum term of an  
29 indeterminate or the term of a determinate sentence of imprisonment  
30 actually imposed; or (B) in the case of a conviction for a class A  
31 misdemeanor, shall not exceed the greater of: (i) five years from the  
32 date of such conviction, or (ii) five years from the date of the expira-  
33 tion of the maximum term of a definite or intermittent term actually  
34 imposed; or (C) in the case of a conviction for any other offense, shall  
35 not exceed the greater of: (i) two years from the date of conviction, or  
36 (ii) two years from the date of the expiration of the maximum term of a  
37 definite or intermittent term actually imposed, PROVIDED, HOWEVER, THAT  
38 IN THE CASE OF A CONVICTION FOR AN OFFENSE FOR WHICH REGISTRATION AS A  
39 SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION  
40 ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, AND THE VICTIM OF SUCH  
41 OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, THE  
42 DURATION OF AN ORDER OF PROTECTION ISSUED PURSUANT TO THIS SUBDIVISION  
43 MAY BE, BUT SHALL NOT EXCEED, THE GREATER OF THE APPLICABLE DURATION  
44 PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS SUBDIVISION OR UNTIL  
45 THE VICTIM OF SUCH OFFENSE ATTAINS THE AGE OF EIGHTEEN. For purposes of  
46 determining the duration of an order of protection entered pursuant to  
47 this subdivision, a conviction shall be deemed to include a conviction  
48 that has been replaced by a youthful offender adjudication. In addition  
49 to any other conditions such an order may require that the defendant:

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

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

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

24 S 18. No municipal corporation, as defined in section 2 of the general  
25 municipal law, shall, on or after the effective date of the chapter of  
26 the laws of 2011 that created this section, enact any local law, ordi-  
27 nance, code, rule or regulation requiring a sex offender, as such term  
28 is defined by section 168-a of the correction law, to comply with a  
29 residency restriction. The provisions of this act shall invalidate and  
30 preempt any such local law, ordinance, code, rule or regulation enacted  
31 after the effective date of the chapter of the laws of 2011 that added  
32 this section.

33 S 19. The provisions of this act shall preempt and invalidate any  
34 local law, ordinance, code, rule or regulation enacted before the effec-  
35 tive date of the chapter of the laws of 2011 that added this section  
36 requiring a sex offender, as such term is defined by section 168-a of  
37 the correction law, to comply with a residency restriction, except that  
38 nothing in this act shall preclude any local probation department from  
39 enforcing any lawful condition of probation that may be imposed on a  
40 sentenced offender.

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

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

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