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

4723

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. McDONOUGH -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to requiring the electronic monitoring of certain sex offenders

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

Section 1. Section 168-w of the correction law, as relettered by chapter 604 of the laws of 2005, is relettered 168-x and a new section 168-w is added to read as follows:

S 168-W. ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS. 1. ANY SEX OFFENDER HAVING BEEN ASSIGNED A LEVEL THREE RISK OR DESIGNATED A SEXUAL PREDATOR, A SEXUALLY VIOLENT OFFENDER OR A PREDICATE SEX OFFENDER, WHOSE CRIME WAS COMMITTED PRIOR TO, ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL BE PLACED ON ELECTRONIC MONITORING.

2. THE DIVISION SHALL ESTABLISH A SYSTEM OF ACTIVE ELECTRONIC MONITORING THAT IDENTIFIES THE LOCATION OF A SEX OFFENDER REQUIRED TO BE MONITORED PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND THAT CAN PRODUCE, UPON REQUEST, REPORTS OR RECORDS OF THE SEX OFFENDER'S PRESENCE NEAR OR WITHIN A CRIME SCENE OR PROHIBITED AREA OR THE SEX OFFENDER'S DEPARTURE FROM SPECIFIED GEOGRAPHIC LIMITATIONS.

3. THE DIVISION SHALL ALSO PROMULGATE REGULATIONS IMPLEMENTING THE IMPOSITION AND COLLECTION OF FEES RELATED TO ELECTRONIC MONITORING PURSUANT TO THIS SECTION. SUCH REGULATIONS SHALL UTILIZE A MEANS TEST BASED ON TWO HUNDRED PERCENT OF THE FEDERAL POVERTY GUIDELINES PROMULGATED ANNUALLY BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AND IF THE SEX OFFENDER FALLS BELOW SUCH PERCENTAGE THEN NO FEE SHALL BE CHARGED, AND EARNINGS ABOVE SUCH PERCENTAGE SHALL BE CONSIDERED ON A SLIDING SCALE. SUCH REGULATIONS SHALL ALSO PROVIDE THAT THE DIVISION OF PAROLE OR THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES, AS APPLICABLE, CONSIDER ANY ADDITIONAL TEST OR INDICIA THAT DEMONSTRATES THE INABILITY OF THE SEX OFFENDER TO PAY SUCH FEES. EMPLOYEES OF THE

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

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DIVISION OF PAROLE OR THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES SHALL BE PROHIBITED FROM COLLECTING ELECTRONIC MONITORING RELATED FEES.

4. ANY SEX OFFENDER REQUIRED TO BE ELECTRONICALLY MONITORED PURSUANT TO THE PROVISIONS OF THIS SECTION WHO VIOLATES SUCH REQUIREMENT SHALL BE GUILTY OF A CLASS E FELONY UPON CONVICTION FOR THE FIRST OFFENSE, AND UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SHALL BE GUILTY OF A CLASS D FELONY. ANY SUCH VIOLATION MAY ALSO BE THE BASIS FOR REVOCATION OF PAROLE PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-I OF THE EXECUTIVE LAW OR THE BASIS FOR REVOCATION OF PROBATION PURSUANT TO ARTICLE FOUR HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Provided that any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be promulgated on or before such effective date.