

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. RABBITT, KOLB, FINCH, McDONOUGH, McKEVITT, MOLINARO -- Multi-Sponsored by -- M. of A. CALHOUN, CROUCH -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the criminal procedure law and the family court act, in relation to requiring persons adjudicated as juvenile delinquents, juvenile offenders and youthful offenders for sex offenses to register as sex offenders

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

1 Section 1. Section 168-a of the correction law is amended by adding  
2 two new subdivisions 19 and 20 to read as follows:

3 19. "CONVICTION" INCLUDES (A) ANY ADJUDICATION OF A PERSON THIRTEEN,  
4 FOURTEEN OR FIFTEEN YEARS OF AGE AS A JUVENILE DELINQUENT FOR THE  
5 COMMISSION OF AN ACT THAT, IF COMMITTED BY AN ADULT, WOULD BE A SEX  
6 OFFENSE OR A SEXUALLY VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT  
7 PROVISION OF LAW; (B) ANY CONVICTION OF A JUVENILE OFFENDER FOR A SEX  
8 OFFENSE OR A SEXUALLY VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT  
9 PROVISION OF LAW; AND (C) ANY YOUTHFUL OFFENDER FINDING THAT IS SUBSTI-  
10 TUTED FOR A CONVICTION OF AN ACT THAT IS A SEX OFFENSE OR A SEXUALLY  
11 VIOLENT OFFENSE, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW.

12 20. "FACILITY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES" MEANS ANY  
13 FACILITY REFERRED TO IN SECTION FIVE HUNDRED FOUR OR FIVE HUNDRED FOUR-A  
14 OF THE EXECUTIVE LAW.

15 S 2. Subdivision 1 of section 168-c of the correction law, as amended  
16 by chapter 11 of the laws of 2002, is amended to read as follows:

17 1. In the case of any sex offender, it shall be the duty of the  
18 department, hospital, FACILITY OF THE OFFICE OF CHILDREN AND FAMILY  
19 SERVICES or local correctional facility at least ten calendar days prior  
20 to the release or discharge of any sex offender from a correctional  
21 facility, hospital or local correctional facility to notify the division

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

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1 of the contemplated release or discharge of such sex offender, informing  
2 the division in writing on a form provided by the division indicating  
3 the address at which he or she proposes to reside and the name and  
4 address of any institution of higher education at which he or she  
5 expects to be enrolled, attending or employed, whether for compensation  
6 or not, and whether he or she resides in or will reside in a facility  
7 owned or operated by such institution. If such sex offender changes his  
8 or her place of residence while on parole, such notification of the  
9 change of residence shall be sent by the sex offender's parole officer  
10 within forty-eight hours to the division on a form provided by the divi-  
11 sion. If such sex offender changes the status of his or her enrollment,  
12 attendance, employment or residence at any institution of higher educa-  
13 tion while on parole, such notification of the change of status shall be  
14 sent by the sex offender's parole officer within forty-eight hours to  
15 the division on a form provided by the division.

16 S 3. Subdivision 1 of section 168-e of the correction law, as amended  
17 by chapter 11 of the laws of 2002, is amended to read as follows:

18 1. Any sex offender, to be discharged, paroled, released to post-re-  
19 lease supervision or released from any state or local correctional  
20 facility, hospital, FACILITY OF THE OFFICE OF CHILDREN AND FAMILY  
21 SERVICES or institution where he or she was confined [or], committed OR  
22 PLACED, shall at least fifteen calendar days prior to discharge, parole  
23 or release, be informed of his or her duty to register under this arti-  
24 cle, by the facility in which he or she was confined or committed. The  
25 facility shall require the sex offender to read and sign such form as  
26 may be required by the division stating the duty to register and the  
27 procedure for registration has been explained to him or her and to  
28 complete the registration portion of such form. The facility shall  
29 obtain on such form the address where the sex offender expects to reside  
30 upon his or her discharge, parole or release and the name and address of  
31 any institution of higher education he or she expects to be employed by,  
32 enrolled in, attending or employed, whether for compensation or not, and  
33 whether he or she expects to reside in a facility owned or operated by  
34 such an institution, and shall report such information to the division.  
35 The facility shall give one copy of the form to the sex offender, retain  
36 one copy and shall send one copy to the division which shall provide the  
37 information to the law enforcement agencies having jurisdiction. The  
38 facility shall give the sex offender a form prepared by the division, to  
39 register with the division at least fifteen calendar days prior to  
40 release and such form shall be completed, signed by the sex offender and  
41 sent to the division by the facility at least ten days prior to the sex  
42 offender's release or discharge.

43 S 4. Subdivision 1 of section 168-f of the correction law, as amended  
44 by chapter 453 of the laws of 1999, is amended to read as follows:

45 1. Any sex offender shall, (a) at least ten calendar days prior to  
46 discharge, parole, release to post-release supervision or release from  
47 any state or local correctional facility, hospital, FACILITY OF THE  
48 OFFICE OF CHILDREN AND FAMILY SERVICES or institution where he or she  
49 was confined or committed, or, (b) at the time sentence is imposed for  
50 any sex offender released on probation or discharged upon payment of a  
51 fine, conditional discharge or unconditional discharge, register with  
52 the division on a form prepared by the division.

53 S 5. Section 720.35 of the criminal procedure law, as added by chapter  
54 981 of the laws of 1971, subdivision 1 as amended by chapter 452 of the  
55 laws of 1992, subdivision 2 as amended by chapter 412 of the laws of  
56 2001, subdivision 3 as added by chapter 181 of the laws of 2000 and

1 subdivision 4 as added by chapter 7 of the laws of 2007, is amended to  
2 read as follows:

3 S 720.35 Youthful offender adjudication; effect thereof; records.

4 1. A youthful offender adjudication is not a judgment of conviction  
5 for a crime or any other offense, and does not operate as a disquali-  
6 fication of any person so adjudged to hold public office or public  
7 employment or to receive any license granted by public authority but  
8 shall be deemed a conviction only for the purposes of transfer of super-  
9 vision and custody pursuant to section two hundred fifty-nine-m of the  
10 executive law AND ARTICLE SIX-C OF THE CORRECTION LAW.

11 2. Except where specifically required or permitted by statute or upon  
12 specific authorization of the court, all official records and papers,  
13 whether on file with the court, a police agency or the division of crim-  
14 inal justice services, relating to a case involving a youth who has been  
15 adjudicated a youthful offender, are confidential and may not be made  
16 available to any person or public or private agency, other than the  
17 designated educational official of the public or private elementary or  
18 secondary school in which the youth is enrolled as a student provided  
19 that such local educational official shall only have made available a  
20 notice of such adjudication and shall not have access to any other offi-  
21 cial records and papers, such youth or such youth's designated agent  
22 (but only where the official records and papers sought are on file with  
23 a court and request therefor is made to that court or to a clerk there-  
24 of), an institution to which such youth has been committed, the division  
25 of parole and a probation department of this state that requires such  
26 official records and papers for the purpose of carrying out duties  
27 specifically authorized by law; provided, however, that information  
28 regarding an order of protection or temporary order of protection issued  
29 pursuant to section 530.12 of this chapter or a warrant issued in  
30 connection therewith may be maintained on the statewide automated order  
31 of protection and warrant registry established pursuant to section two  
32 hundred twenty-one-a of the executive law during the period that such  
33 order of protection or temporary order of protection is in full force  
34 and effect or during which such warrant may be executed. Such confiden-  
35 tial information may be made available pursuant to law only for purposes  
36 of adjudicating or enforcing such order of protection or temporary order  
37 of protection and, where provided to a designated educational official,  
38 as defined in section 380.90 of this chapter, for purposes related to  
39 the execution of the student's educational plan, where applicable,  
40 successful school adjustment and reentry into the community. Such  
41 notification shall be kept separate and apart from such student's school  
42 records and shall be accessible only by the designated educational offi-  
43 cial. Such notification shall not be part of such student's permanent  
44 school record and shall not be appended to or included in any documenta-  
45 tion regarding such student and shall be destroyed at such time as such  
46 student is no longer enrolled in the school district. At no time shall  
47 such notification be used for any purpose other than those specified in  
48 this subdivision. IN THE CASE OF A YOUTHFUL OFFENDER FINDING THAT IS  
49 SUBJECT TO THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE  
50 PROVISIONS OF THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO  
51 IMPLEMENT THE PROVISIONS OF SUCH ARTICLE.

52 3. If a youth who has been adjudicated a youthful offender is enrolled  
53 as a student in a public or private elementary or secondary school the  
54 court that has adjudicated the youth as a youthful offender shall  
55 provide notification of such adjudication to the designated educational  
56 official of the school in which such youth is enrolled as a student.

1 Such notification shall be used by the designated educational official  
2 only for purposes related to the execution of the student's educational  
3 plan, where applicable, successful school adjustment and reentry into  
4 the community. Such notification shall be kept separate and apart from  
5 such student's school records and shall be accessible only by the desig-  
6 nated educational official. Such notification shall not be part of such  
7 student's permanent school record and shall not be appended to or  
8 included in any documentation regarding such student and shall be  
9 destroyed at such time as such student is no longer enrolled in the  
10 school district. At no time shall such notification be used for any  
11 purpose other than those specified in this subdivision. IN THE CASE OF  
12 A YOUTHFUL OFFENDER FINDING THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE  
13 SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF THIS SUBDIVISION ARE  
14 SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE PROVISIONS OF SUCH  
15 ARTICLE.

16 4. Notwithstanding subdivision two of this section, whenever a person  
17 is adjudicated a youthful offender and the conviction that was vacated  
18 and replaced by the youthful offender finding was for a sex offense as  
19 that term is defined in article ten of the mental hygiene law, all  
20 records pertaining to the youthful offender adjudication shall be  
21 included in those records and reports that may be obtained by the  
22 commissioner of mental health or the commissioner of mental retardation  
23 and developmental disabilities, as appropriate; the case review panel;  
24 and the attorney general pursuant to section 10.05 of the mental hygiene  
25 law.

26 S 6. Section 380.1 of the family court act, as added by chapter 920 of  
27 the laws of 1982, subdivision 3 as amended by chapter 181 of the laws of  
28 2000 and subdivision 4 as added by chapter 7 of the laws of 2007, is  
29 amended to read as follows:

30 S 380.1. Nature and effect of adjudication. 1. No adjudication under  
31 this article may be denominated a conviction and no person adjudicated a  
32 juvenile delinquent shall be denominated a criminal by reason of such  
33 adjudication BUT SHALL BE DEEMED A CONVICTION ONLY FOR THE PURPOSES OF  
34 ARTICLE SIX-C OF THE CORRECTION LAW.

35 2. No adjudication under this article shall operate as a forfeiture of  
36 any right or privilege or disqualify any person from holding any public  
37 office or receiving any license granted by public authority. Such adju-  
38 dication shall not operate as a disqualification of any person to pursue  
39 or engage in any lawful activity, occupation, profession or calling.

40 3. Except where specifically required by statute, no person shall be  
41 required to divulge information pertaining to the arrest of the respond-  
42 ent or any subsequent proceeding under this article; provided, however,  
43 whenever a person adjudicated a juvenile delinquent has been placed with  
44 the office of children and family services pursuant to section 353.3 of  
45 this article, and is thereafter enrolled as a student in a public or  
46 private elementary or secondary school, the court that has adjudicated  
47 such person shall provide notification of such adjudication to the  
48 designated educational official of the school in which such person is  
49 enrolled as a student. Such notification shall be used by the designated  
50 educational official only for purposes related to the execution of the  
51 student's educational plan, where applicable, successful school adjust-  
52 ment and reentry into the community. Such notification shall be kept  
53 separate and apart from such student's school records and shall be  
54 accessible only by the designated educational official. Such notifica-  
55 tion shall not be part of such student's permanent school record and  
56 shall not be appended to or included in any documentation regarding such

1 student and shall be destroyed at such time as such student is no longer  
2 enrolled in the school district. At no time shall such notification be  
3 used for any purpose other than those specified in this subdivision. IN  
4 THE CASE OF A JUVENILE DELINQUENCY ADJUDICATION THAT IS SUBJECT TO THE  
5 PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF  
6 THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE  
7 PROVISIONS OF SUCH ARTICLE.

8 4. Notwithstanding any other provision of law, where a finding of  
9 juvenile delinquency has been entered, upon request, the records  
10 pertaining to such case shall be made available to the commissioner of  
11 mental health or the commissioner of mental retardation and develop-  
12 mental disabilities, as appropriate; the case review panel; and the  
13 attorney general pursuant to section 10.05 of the mental hygiene law.

14 S 7. This act shall take effect immediately and shall apply to persons  
15 convicted of or adjudicated for a sex offense or a sexually violent  
16 offense prior to the effective date of this act who, on such effective  
17 date, have not completed service of the sentence or adjudication imposed  
18 therefor in its entirety.