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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 17, 2011

Introduced by M. of A. JOHNS, N. RIVERA -- Multi-Sponsored by -- M. of A. BURLING, CALHOUN, CROUCH, GRAF, KATZ, McKEVITT, P. RIVERA, SALADINO, STEVENSON, TEDISCO -- 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. The correction law is amended by adding a new article 6-D to read as follows:

ARTICLE 6-D

SEX OFFENDER GLOBAL POSITIONING SYSTEM ACT

SECTION 169. SHORT TITLE.
169-A. DEFINITIONS.
169-B. ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS.
169-C. CRIMINAL IMPACT.
169-D. PETITION FOR RELIEF OR MODIFICATION.

S 169. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AS AND MAY BE CITED AS THE "SEX OFFENDER GLOBAL POSITIONING SYSTEM ACT".

S 169-A. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING DEFINITIONS APPLY:

1. "ACTIVE TRACKING DEVICE" SHALL MEAN A DEVICE WHICH, WHEN OPERATING NORMALLY, ALLOWS THE OFFENDER'S LOCATION TO BE MONITORED REMOTELY AT LEAST EVERY TWO MINUTES.

2. "PASSIVE TRACKING DEVICE" SHALL MEAN A DEVICE WHICH, WHEN OPERATING NORMALLY, KEEPS A RECORD OF THE LOCATION OF AN INDIVIDUAL AT LEAST ONCE EVERY TWO MINUTES.

3. "COMMUNICATE" SHALL MEAN (A) FOR A PASSIVE TRACKING DEVICE, THE ABILITY TO RECORD THE LOCATION OF THE OFFENDER AND THE DOWNLOADING OF THAT RECORDED INFORMATION AT LEAST ONCE EVERY TWENTY-FOUR HOURS, OR SUCH OTHER INTERVAL OF TIME AS REQUIRED BY THE DIVISION, (B) FOR AN ACTIVE

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

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TRACKING DEVICE, THE ABILITY TO MONITOR THE LOCATION OF THE OFFENDER ON A CONTINUOUS BASIS OF AT LEAST TWO MINUTE INTERVALS.

4. "DEVICE" SHALL MEAN GLOBAL POSITIONING SYSTEM EQUIPMENT WHICH ALLOWS THE LOCATION OF SUCH EQUIPMENT TO BE DETERMINED ON A CONSTANT BASIS OTHER THAN AS A RESULT OF GEOGRAPHIC, TOPOGRAPHIC, WEATHER, TECHNICAL FAILURE, OR BUILDING RELATED REASONS. SUCH DETERMINATION NEED NOT BE MADE INSTANTLY AS ALLOWED BY AN ACTIVE TRACKING DEVICE BUT MAY ALSO BE DETERMINED AT A SUBSEQUENT PERIOD BY A PASSIVE TRACKING DEVICE. SUCH DEVICE SHALL, WHEN FUNCTIONING NORMALLY, BE ELECTRONICALLY CONNECTED TO AN ANKLE BRACELET OR OTHER DEVICE WHICH IS LOCKED ONTO THE OFFENDER BY A REPRESENTATIVE OF LAW ENFORCEMENT.

5. "DIVISION" SHALL MEAN THE DIVISION OF CRIMINAL JUSTICE SERVICES.

6. "NOTICE" SHALL MEAN NOTIFICATION TO A COLLECTING AGENCY THAT THE OFFENDER IS NO LONGER TRANSMITTING HIS OR HER LOCATION BY VIRTUE OF THE DEVICE OR HAS OTHERWISE ENTERED INTO AN AREA WHICH THE OFFENDER IS PROHIBITED FROM ENTERING INTO PURSUANT TO ANY LEGAL ORDER OR DIRECTIVE. NOTICE SHALL NOT CONSTITUTE AN OFFENDER'S ENTERING INTO A PLACE WHERE TRANSMISSION SIGNALS ARE NOT MADE BY THE DEVICE, UNLESS THE ENTRANCE THEREOF IS IN VIOLATION OF A DIRECTIVE MADE TO THE OFFENDER BY A REPRESENTATIVE OF THE DIVISION OR HIS OR HER PAROLE OR PROBATION OFFICER.

7. "OFFENDER" SHALL MEAN A PERSON REQUIRED TO WEAR A DEVICE PURSUANT TO THIS ARTICLE.

8. "CENTRALLY MONITORED" SHALL MEAN THE CONSTANT ABILITY OF THE DIVISION TO RECEIVE NOTICES FROM A COLLECTING AGENCY.

9. "COLLECTING AGENCY" SHALL MEAN AN ENTITY WHICH SHALL BE RESPONSIBLE FOR RECEIVING DATA TRANSMITTED BY A DEVICE.

10. "LOCAL LAW ENFORCEMENT AGENCY" SHALL MEAN A COUNTY PROBATION DEPARTMENT OR OTHER AGENCY RESPONSIBLE FOR MONITORING THOSE INDIVIDUALS WHO ARE SERVING A SENTENCE OF PROBATION AS A RESULT OF A CRIMINAL CONVICTION.

11. "OFFENDER'S LAW ENFORCEMENT SUPERVISOR" SHALL MEAN AN EMPLOYEE OF THE DIVISION WHO RECEIVES NOTICE FROM A COLLECTING AGENCY OR, IF THE OFFENDER IS UNDER THE SUPERVISION OF THE DIVISION OF PAROLE OR A LOCAL PROBATION DEPARTMENT, SHALL MEAN THE OFFENDER'S PAROLE OR PROBATION OFFICER OR A PERSON DESIGNATED BY THE DIVISION OF PAROLE OR A LOCAL PROBATION DEPARTMENT TO ACT FOR SUCH PERSON IN SUCH PERSON'S ABSENCE.

12. "ANKLE BRACELET OR OTHER ATTACHMENT" SHALL MEAN A PIECE OF EQUIPMENT WHICH CAN SEND OR RECEIVE AN ELECTRONIC SIGNAL TO A DEVICE WHEN THE EQUIPMENT IS WITHIN AT LEAST ONE HUNDRED FEET OF THE DEVICE. SUCH EQUIPMENT SHALL BE CONNECTED ONTO EITHER THE ANKLE, WRIST, LEG, OR ARM OF AN OFFENDER AS DETERMINED BY THE RULES PROMULGATED BY THE DIVISION.

13. "OFFENDER MONITORING OFFICE" SHALL MEAN AN OFFICE OR BUREAU UNDER CONSTANT OPERATION BY THE DIVISION WHICH SHALL BE ABLE TO RECEIVE NOTICES AND TRANSMIT THE INFORMATION CONTAINED IN SUCH NOTICES. THE OFFENDER MONITORING OFFICE NEED NOT BE A PHYSICAL OFFICE BUT MAY CONSIST OF THE RESIDENCE OF A DIVISION EMPLOYEE OR THE RESIDENCES OF DIVISION EMPLOYEES WHO ARE ON CALL TO RECEIVE NOTICES.

S 169-B. ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS. 1. IN ADDITION TO ANY OTHER REQUIREMENT IMPOSED BY LAW, ANY SEX OFFENDER, AS DEFINED BY SECTION ONE HUNDRED SIXTY-EIGHT-A OF THIS CHAPTER, WHO HAS BEEN OR IS ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE, DESIGNATED AS A LEVEL THREE OFFENDER UNDER THE SEX OFFENDER REGISTRATION ACT SHALL, ANYTIME THEY ARE NOT OTHERWISE INCARCERATED, BE REQUIRED TO WEAR A GLOBAL POSITIONING SYSTEM DEVICE WHICH DETERMINES THEIR LOCATION WITHIN THE STATE OF NEW YORK. SUCH DEVICE MAY BE AN ACTIVE TRACKING DEVICE OR A PASSIVE TRACKING DEVICE AS DIRECTED BY THE SENTENCING COURT OR ANY OTHER

COURT OF COMPETENT JURISDICTION. IN THE EVENT NO COURT DIRECTIVE EXISTS, A PASSIVE DEVICE SHALL BE UTILIZED. SUCH DEVICE SHALL BE WORN FOR THE DURATION OF THE PERIOD WHICH SUCH PERSON IS REQUIRED TO REGISTER PURSUANT TO ARTICLE SIX-C OF THIS CHAPTER. IN THE EVENT THE LOCATION OF SUCH INDIVIDUAL WITHIN THE STATE DOES NOT, FOR TOPOGRAPHIC, GEOGRAPHIC, OR BUILDING RELATED REASONS, ALLOW FOR A DETERMINATION OF THE LOCATION OF SUCH INDIVIDUAL, THE DEVICE SHALL BE ABLE TO DETERMINE WHETHER SUCH PERSON IS MOVING OR NOT. SUCH SYSTEM SHALL BE CONTINUOUSLY MONITORED BY A COLLECTING AGENCY.

2. THE DIVISION SHALL PROMULGATE RULES AND REGULATIONS RELATING TO THE ESTABLISHMENT OF A COLLECTING AGENCY. SUCH RULES AND REGULATIONS SHALL REQUIRE GENERALLY THAT NOTICE BE ABLE TO BE TRANSMITTED WHEN AN OFFENDER ENTERS INTO A PROHIBITED AREA, AS DETERMINED BY THE OFFENDER'S PROBATION OR PAROLE OFFICER OR AS ORDERED BY A COURT OF COMPETENT JURISDICTION PROVIDED THE COLLECTING AGENCY HAS KNOWLEDGE WHICH PROHIBITIONS EXIST WITH RESPECT TO A PARTICULAR OFFENDER AND HAS THE DATA AVAILABLE TO IT TO DETERMINE WHEN AN OFFENDER ENTERS INTO SUCH AN AREA. THE DIVISION SHALL, IN EVALUATING A POTENTIAL COLLECTING AGENCY, DETERMINE WHETHER THE COLLECTING AGENCY HAS THE CAPACITY TO ELECTRONICALLY MAP, ON A COMPUTER MAPPING SYSTEM, AREAS WHERE SUCH OFFENDER IS NOT PERMITTED, AND SHALL ALSO EVALUATE WHETHER THE COLLECTING AGENCY REGULARLY UPDATES ITS DATA. SUCH COLLECTING AGENCY SHALL, WHEN THE DEVICE IS FUNCTIONING NORMALLY, BE REQUIRED TO ENSURE THAT ALL PERSONS REQUIRED TO WEAR AN ANKLE BRACELET OR OTHER ATTACHMENT PURSUANT TO THIS ARTICLE ARE CENTRALLY MONITORED AND THE COLLECTING AGENCY SHALL BE ABLE TO GENERALLY DETERMINE, AS LONG AS THE DEVICE IS FUNCTIONING NORMALLY, WHETHER AN OFFENDER APPEARS TO HAVE CAUSED THE DEVICE TO BE INOPERABLE, OR APPEARS TO HAVE DESTROYED THE DEVICE OR ANKLE BRACELET OR OTHER ATTACHMENT, OR ENTERS INTO A PROSCRIBED AREA OR CAUSES THE DEVICE NOT TO TIMELY DOWNLOAD INFORMATION RECEIVED BY THE DEVICE AT LEAST ONCE EVERY TWENTY-FOUR HOURS, OR HAS SEPARATED THE ANKLE BRACELET OR OTHER ATTACHMENT MORE THAN ONE HUNDRED FEET FROM THE DEVICE. THE RULES AND REGULATIONS TO BE PROMULGATED PURSUANT TO THIS SUBDIVISION SHALL BE IMPLEMENTED WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE. IN THE EVENT A COLLECTING AGENCY IS NOT OTHERWISE AVAILABLE OR IS DETERMINED BY THE DIVISION TO BE COST INEFFICIENT, THE DIVISION SHALL BE THE COLLECTING AGENCY. WHEN A NOTICE IS TRANSMITTED TO A COLLECTING AGENCY, RULES AND REGULATIONS SHALL REQUIRE THE COLLECTING AGENCY TO IMMEDIATELY NOTIFY EITHER THE DIVISION'S OFFENDER MONITORING OFFICE OR THE DIVISION OF PAROLE. IN THE EVENT THE OFFENDER IS SUBJECT TO A SENTENCE OF PROBATION AND THE COUNTY PROBATION DIRECTOR, WHERE SUCH OFFENDER RESIDES, HAS CONSENTED, THE COLLECTING AGENCY SHALL IMMEDIATELY NOTIFY THE COUNTY PROBATION DEPARTMENT INSTEAD OF THE DIVISION'S OFFENDER MONITORING OFFICE. IN THE EVENT THE DIRECTOR OF A COUNTY PROBATION DEPARTMENT HAS NOT CONSENTED AS PROVIDED FOR IN THIS SUBDIVISION, THE OFFENDER MONITORING OFFICE SHALL BE NOTIFIED WITH RESPECT TO THOSE INDIVIDUALS SERVING A SENTENCE OF PROBATION AND THE EMPLOYEE OF THE OFFENDER MONITORING OFFICE SHALL NOTIFY THE PROBATION OFFICER IN THE MECHANISM PROVIDED FOR BY THE RULES AND REGULATIONS OF THE DIVISION, WHICH ARE DIRECTED TO BE MADE. SUCH RULES AND REGULATIONS SHALL ALSO INCLUDE IMMEDIATE NOTIFICATION TO THE STATE POLICE BARRACKS WHERE SUCH OFFENDER IS BELIEVED TO BE NEAR, AND THE CONTENTS OF THE NOTICE.

3. IN THE EVENT AN OFFENDER'S PROBATION OR PAROLE OFFICER (OR PERSON ACTING FOR SUCH OFFICER) IS NOTIFIED BY THE COLLECTING AGENCY, SUCH OFFICER SHALL TAKE SUCH ACTION HE OR SHE DEEMS APPROPRIATE. IN THE EVENT THE COLLECTING AGENCY NOTIFIES AN EMPLOYEE OF THE DIVISION'S OFFENDER

MONITORING OFFICE, SUCH EMPLOYEE SHALL NOTIFY THE STATE POLICE OF THE RECEIPT OF SUCH NOTICE AS SOON AS POSSIBLE AND THE CONTENTS OF SUCH NOTICE. IF THE OFFENDER IS ALSO ON PAROLE OR PROBATION, THE EMPLOYEE OF THE DIVISION'S OFFENDER MONITORING OFFICE SHALL NOTIFY THE OFFENDER'S PAROLE OR PROBATION OFFICER (OR A PERSON ACTING IN HIS OR HER PLACE) OF THE CONTENTS OF THE NOTICE, AS SOON AS PRACTICABLE, BUT IN ANY EVENT WITHIN TWENTY-FOUR HOURS OF RECEIVING THE NOTICE. IN THE EVENT AN OFFENDER IS NOT UNDER A SENTENCE OF PROBATION OR UNDER THE SUPERVISION OF THE DIVISION OF PAROLE, THE EMPLOYEE OF THE DIVISION'S OFFENDER MONITORING OFFICE WHO RECEIVES NOTICE SHALL IMMEDIATELY NOTIFY THE STATE POLICE IN AN AREA AS CLOSE AS PRACTICABLE TO WHERE IT IS BELIEVED SUCH OFFENDER IS OR IS SUPPOSED TO BE, OF THE CONTENTS OF THE NOTICE PROVIDED BY THE COLLECTING AGENCY RELATING TO THE OFFENDER.

4. SUCH DEVICE SHALL NOT BE REQUIRED TO BE PHYSICALLY ATTACHED TO SUCH OFFENDER'S PERSON OR CLOTHING WHILE SUCH OFFENDER IS IN HIS OR HER RESIDENCE, PROVIDED THE FAILURE TO SO ATTACH SUCH DEVICE DOES NOT CAUSE NOTICE TO BE PROVIDED TO A COLLECTING AGENCY. PROVIDED FURTHER, HOWEVER, THAT IF THE OFFENDER'S RESIDENCE IS A SHELTER, HOTEL OR MOTEL, OR OTHER LOCATION WHICH IS OPEN TO THE PUBLIC OR IS OPEN TO THOSE IN NEED OF SUCH RESIDENCE BECAUSE OF SUCH PERSON'S LACK OF OTHER RESIDENTIAL LIVING SPACE, SUCH PERSON SHALL BE REQUIRED TO WEAR THE DEVICE CONSTANTLY EXCEPT UNDER GUIDELINES PRESCRIBED BY THE DIVISION WHICH ALLOW THE DEVICE TO DOWNLOAD INFORMATION AND/OR BE CHARGED AS NEEDED, OR ACTIVITIES AS SPECIFIED BY DIVISION RULES AND REGULATIONS.

5. THE DIVISION IS AUTHORIZED AND DIRECTED TO PROMULGATE RULES AND REGULATIONS PURSUANT TO THIS SECTION. SUCH RULES SHALL:

(A) PROVIDE FOR THE PAYMENT BY THE OFFENDER OF THE COSTS OF ELECTRONIC MONITORING AS REQUIRED BY THIS ARTICLE;

(B) INCLUDE A MEANS TESTING PROVISION WHICH REQUIRES AN OFFENDER CAPABLE OF PAYING ALL OR A PORTION OF SUCH COSTS TO PAY THOSE COSTS;

(C) INCLUDE A PROCESS WHERE THE DEVICE WILL BE PROVIDED TO THE OFFENDER AND THE METHOD THE ANKLE BRACELET OR OTHER ATTACHMENT, WHICH IS ELECTRONICALLY CONNECTED TO THE DEVICE, SHALL BE ATTACHED TO THE OFFENDER. THE RULES SHALL REQUIRE THAT AN OFFENDER HAVE THE ANKLE BRACELET OR OTHER ATTACHMENT ATTACHED IMMEDIATELY OR AS SOON AS PRACTICABLE THEREAFTER UPON BEING ADJUDICATED A LEVEL THREE SEX OFFENDER UNDER ARTICLE SIX-C OF THIS CHAPTER. IN THE EVENT A PERSON DESIGNATED A LEVEL THREE SEX OFFENDER IS INCARCERATED, SUCH ANKLE BRACELET OR OTHER ATTACHMENT SHALL BE MADE PRIOR TO SUCH OFFENDER'S BEING RELEASED FROM INCARCERATION;

(D) REQUIRE ALL EXISTING LEVEL THREE SEX OFFENDERS WHO ARE NOT INCARCERATED TO HAVE AN ANKLE BRACELET OR OTHER ATTACHMENT ATTACHED AS SOON AS PRACTICABLE BUT IN ANY EVENT WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVENESS OF THIS ARTICLE; AND

(E) REQUIRE A PROCESS FOR CHANGING THE BATTERIES AND/OR CHARGING THE DEVICE AND ANKLE BRACELET OR ATTACHMENT AS WELL AS THE PROCESS FOR DOWNLOADING INFORMATION FROM THE DEVICE TO THE COLLECTING AGENCY AND THE TIME REQUIREMENTS WHEN SUCH INFORMATION SHALL BE DOWNLOADED. THE DIVISION SHALL MAKE RULES PROVIDED FOR IN THIS PARAGRAPH IN CONSULTATION WITH REPRESENTATIVES OF THE DIVISION OF PAROLE AND IN COOPERATION WITH AN ASSOCIATION OF INDIVIDUALS WHO SERVE AS DIRECTORS OF COUNTY PROBATION DEPARTMENTS.

6. THE DIVISION SHALL SEND A NOTICE TO ALL LEVEL THREE SEX OFFENDERS, WITHIN NINETY DAYS OF THE EFFECTIVENESS OF THIS ARTICLE DIRECTING SUCH OFFENDER WHERE TO GO AND WHEN TO HAVE THE ANKLE BRACELET OR OTHER ATTACHMENT ATTACHED. WHEREVER PRACTICABLE, AN OFFENDER'S PROBATION OR

PAROLE OFFICER SHALL ALSO ADVISE SUCH OFFENDER WHEN AND WHERE THE ANKLE BRACELET OR OTHER ATTACHMENT SHALL BE ATTACHED TO THE OFFENDER.

S 169-C. CRIMINAL IMPACT. ANY OFFENDER SUBJECT TO THE PROVISIONS OF THIS ARTICLE WHO VIOLATES THE REQUIREMENTS OF THIS ARTICLE BY:

1. INTENTIONALLY CAUSING THE DEVICE TO BE INOPERATIVE OR IN A STATE OF OPERATION WHERE IT CANNOT COMMUNICATE NOTICE;

2. INTENTIONALLY CUTTING, DESTROYING, MODIFYING, OR DAMAGING THE DEVICE OR ANY COMPONENT SUCH AS AN ANKLE BRACELET OR OTHER COMMUNICATIONS MECHANISM WHICH COMMUNICATES WITH THE DEVICE;

3. INTENTIONALLY ENTERS INTO AN AREA WHICH HE OR SHE IS PROHIBITED FROM ENTERING PURSUANT TO ANY LAWFUL ORDER BY THE DIVISION OR BY A PAROLE OR PROBATION OFFICER, OR OTHER LAW ENFORCEMENT OFFICIAL AUTHORIZED TO MAKE SUCH DIRECTIVES;

4. INTENTIONALLY FAILS TO UNDERTAKE THE STEPS NECESSARY TO TRANSMIT INFORMATION FROM SUCH DEVICE TO THE COLLECTING AGENCY (INCLUDING, BUT NOT LIMITED TO INTENTIONALLY FAILING TO REPORT TO HAVE AN ANKLE BRACELET OR OTHER ATTACHMENT ATTACHED TO HIM OR HER); OR

5. INTENTIONALLY UNDERTAKES ACTIVITIES KNOWING SUCH ACTIVITIES CAUSE NOTICE TO BE TRANSMITTED TO A COLLECTING AGENCY SHALL BE GUILTY OF A CLASS A MISDEMEANOR FOR A FIRST OFFENSE AND A CLASS D FELONY FOR EACH SUBSEQUENT OFFENSE. 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 169-D. PETITION FOR RELIEF OR MODIFICATION. 1. ANY OFFENDER WHO IS REQUIRED TO WEAR A DEVICE, ANKLE BRACELET OR OTHER ATTACHMENT PURSUANT TO THIS ARTICLE MAY BE RELIEVED OF SUCH OBLIGATION UPON THE GRANTING OF A PETITION FOR RELIEF BY THE SENTENCING COURT OR BY THE COURT WHICH MADE THE DETERMINATION REGARDING DURATION OF REGISTRATION AND LEVEL OF NOTIFICATION UNDER ARTICLE SIX-C OF THIS CHAPTER. SUCH RELIEF MAY INCLUDE THE MODIFICATION OF THE TYPE OF DEVICE FROM ACTIVE TO PASSIVE OR VICE VERSA, OR THE RELIEF OF NOT HAVING TO WEAR THE DEVICE DURING DESIGNATED PERIODS OR AT ALL. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT HIS OR HER RISK OF REPEAT OFFENSE AND THREAT TO PUBLIC SAFETY IS SUCH THAT THE WEARING OF THE DEVICE IS NO LONGER NECESSARY (EITHER PERMANENTLY OR ON A TEMPORARY BASIS). SUCH PETITION, IF GRANTED, SHALL NOT RELIEVE THE PETITIONER OF ANY OTHER DUTY IMPOSED UNDER LAW, INCLUDING THE OBLIGATION TO WEAR SUCH DEVICE IN THE EVENT OF A FUTURE CONVICTION. THE OFFENDER IS REQUIRED TO NOTIFY THE COURT, WHERE ANY PETITION IS GRANTED PURSUANT TO THIS SECTION, OF ANY FUTURE CRIMINAL CONVICTION. SUCH COURT SHALL THEN CONSIDER WHETHER THE DEVICE SHOULD BE REQUIRED TO BE WORN AGAIN AND MAY SO REQUIRE.

2. NO PETITION UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE CONSIDERED MORE THAN ANNUALLY. IN THE EVENT THAT THE SEX OFFENDER'S PETITION FOR RELIEF IS GRANTED, THE DISTRICT ATTORNEY MAY APPEAL AS OF RIGHT FROM THE ORDER PURSUANT TO THE PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRESENT THE SEX OFFENDER UPON THE GROUND THAT THE SEX OFFENDER IS FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY APPEAL AS A POOR PERSON PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

3. PRIOR TO MAKING ANY MODIFICATION UNDER THIS SECTION, THE COURT SHALL DO ALL IT REASONABLY CAN TO NOTIFY AND HEAR COMMENT FROM THE VICTIM OR HIS OR HER FAMILY PRIOR TO MAKING A DETERMINATION ON THE PETI-

TION. THE COURT SHALL RENDER AN ORDER SETTING FORTH ITS DETERMINATION, AND THE FINDINGS OF FACT AND CONCLUSIONS OF LAW ON WHICH THE DETERMINATION IS BASED. IF THE PETITION IS GRANTED IT SHALL BE THE OBLIGATION OF THE COURT TO SUBMIT A COPY OF ITS ORDER TO THE DIVISION. UPON APPLICATION OF EITHER PARTY, THE COURT SHALL SEAL ANY PORTION OF THE COURT FILE OR RECORD WHICH CONTAINS MATERIAL THAT IS CONFIDENTIAL UNDER ANY STATE OR FEDERAL STATUTE.

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.