

5189

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. AVELLA -- 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, in relation to risk level determination hearings for convicted sex offenders

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

1 Section 1. Subdivisions 2 and 3 of section 168-d of the correction
2 law, subdivision 2 as amended by chapter 684 of the laws of 2005 and
3 subdivision 3 as amended by chapter 11 of the laws of 2002, are amended
4 to read as follows:
5 2. Any sex offender, who is released on probation or discharged upon
6 payment of a fine, conditional discharge or unconditional discharge
7 shall, prior to such release or discharge, be informed of his or her
8 duty to register under this article by the court in which he or she was
9 convicted. At the time sentence is imposed, such sex offender shall
10 register with the division on a form prepared by the division. The court
11 shall require the sex offender to read and sign such form and to
12 complete the registration portion of such form. The court shall on such
13 form obtain the address where the sex offender expects to reside upon
14 his or her release, and the name and address of any institution of high-
15 er education he or she expects to be employed by, enrolled in, attending
16 or employed, whether for compensation or not, and whether he or she
17 expects to reside in a facility owned or operated by such an institu-
18 tion, and shall report such information to the division. The court shall
19 give one copy of the form to the sex offender and shall send two copies
20 to the division which shall forward the information to the law enforce-
21 ment agencies having jurisdiction. [The]
22 2-A. WITHIN FIVE DAYS OF THE CONVICTION OF ANY SEX OFFENDER, WHO IS
23 EXPECTED TO BE, UPON SENTENCING, RELEASED ON PROBATION OR DISCHARGED
24 UPON PAYMENT OF A FINE, CONDITIONAL DISCHARGE OR UNCONDITIONAL

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

LBD11402-01-1

1 DISCHARGE, THE court shall [also] notify the district attorney and the
2 sex offender of the date of the determination proceeding to be held
3 pursuant to subdivision three of this section, which shall be held [at
4 least forty-five] WITHIN TWENTY days after such notice is given AND
5 PRIOR TO SENTENCING. This notice shall include the following statement
6 or a substantially similar statement: "This proceeding is being held to
7 determine whether you will be classified as a level 3 offender (risk of
8 repeat offense is high), a level 2 offender (risk of repeat offense is
9 moderate), or a level 1 offender (risk of repeat offense is low), or
10 whether you will be designated as a sexual predator, a sexually violent
11 offender or a predicate sex offender, which will determine how long you
12 must register as a sex offender and how much information can be provided
13 to the public concerning your registration. If you fail to appear at
14 this proceeding, [without sufficient excuse,] it shall be held in your
15 absence. Failure to appear may result in a longer period of registration
16 or a higher level of community notification because you are not present
17 to offer evidence or contest evidence offered by the district attorney."
18 The court shall also advise the sex offender that he or she has a right
19 to a hearing prior to the court's determination, that he or she has the
20 right to be represented by counsel at the hearing and that counsel will
21 be appointed if he or she is financially unable to retain counsel. If
22 the sex offender applies for assignment of counsel to represent him or
23 her at the hearing and counsel was not previously assigned to represent
24 the sex offender in the underlying criminal action, the court shall
25 determine whether the offender is financially unable to retain counsel.
26 If such a finding is made, the court shall assign counsel to represent
27 the sex offender pursuant to article eighteen-B of the county law.

28 2-B. Where the court orders a sex offender released on probation, such
29 order must include a provision requiring that he or she comply with the
30 requirements of this article. Where such sex offender violates such
31 provision, probation may be immediately revoked in the manner provided
32 by article four hundred ten of the criminal procedure law.

33 3. For sex offenders WHO ARE EXPECTED TO BE, UPON SENTENCING, released
34 on probation or discharged upon payment of a fine, conditional discharge
35 or unconditional discharge, it shall be the duty of the court applying
36 the guidelines established in subdivision five of section one hundred
37 sixty-eight-1 of this article to determine, PRIOR TO SENTENCING, the
38 level of notification pursuant to subdivision six of section one hundred
39 sixty-eight-1 of this article and whether such sex offender shall be
40 designated a sexual predator, sexually violent offender, or predicate
41 sex offender as defined in subdivision seven of section one hundred
42 sixty-eight-a of this article. At least fifteen days prior to the deter-
43 mination proceeding, the district attorney shall provide to the court
44 and the sex offender a written statement setting forth the determi-
45 nations sought by the district attorney together with the reasons for
46 seeking such determinations. The court shall allow the sex offender to
47 appear and be heard. The state shall appear by the district attorney, or
48 his or her designee, who shall bear the burden of proving the facts
49 supporting the determinations sought by clear and convincing evidence.
50 Where there is a dispute between the parties concerning the determi-
51 nations, the court shall adjourn the hearing as necessary to permit the
52 sex offender or the district attorney to obtain materials relevant to
53 the determinations from any state or local facility, hospital, institu-
54 tion, office, agency, department or division. Such materials may be
55 obtained by subpoena if not voluntarily provided to the requesting
56 party. In making the determinations, the court shall review any victim's

1 statement and any relevant materials and evidence submitted by the sex
2 offender and the district attorney and the court may consider reliable
3 hearsay evidence submitted by either party provided that it is relevant
4 to the determinations. Facts previously proven at trial or elicited at
5 the time of entry of a plea of guilty shall be deemed established by
6 clear and convincing evidence and shall not be relitigated. The court
7 shall render an order setting forth its determinations and the findings
8 of fact and conclusions of law on which the determinations are based. A
9 copy of the order shall be submitted by the court to the division. Upon
10 application of either party, the court shall seal any portion of the
11 court file or record which contains material that is confidential under
12 any state or federal statute. Either party may appeal as of right from
13 the order pursuant to the provisions of articles fifty-five, fifty-six
14 and fifty-seven of the civil practice law and rules. Where counsel has
15 been assigned to represent the sex offender upon the ground that the sex
16 offender is financially unable to retain counsel, that assignment shall
17 be continued throughout the pendency of the appeal, and the person may
18 appeal as a poor person pursuant to article eighteen-B of the county
19 law.

20 S 2. This act shall take effect immediately.