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2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. RABBITT, KOLB, FINCH, McDONOUGH, McKEVITT, HAWLEY  
-- Multi-Sponsored by -- M. of A. 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 ASSEM-  
BLY, 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  
22 of the contemplated release or discharge of such sex offender, informing

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

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

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

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

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

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

52 S 5. Section 720.35 of the criminal procedure law, as added by chapter  
53 981 of the laws of 1971, subdivisions 1, 2 and 4 as amended by section  
54 87 of subpart B of part C of chapter 62 of the laws of 2011 and subdivi-  
55 sion 3 as added by chapter 181 of the laws of 2000, is amended to read  
56 as follows:

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

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

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

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

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

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

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

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

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

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

1 used for any purpose other than those specified in this subdivision. IN  
2 THE CASE OF A JUVENILE DELINQUENCY ADJUDICATION THAT IS SUBJECT TO THE  
3 PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW, THE PROVISIONS OF  
4 THIS SUBDIVISION ARE SUPERSEDED TO THE EXTENT NECESSARY TO IMPLEMENT THE  
5 PROVISIONS OF SUCH ARTICLE.

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

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