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

9173

I N A S S E M B L Y

March 26, 2014

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

AN ACT to amend the correction law, the tax law and the penal law, in relation to sex offender registration and verification by sex offenders, the subdirectory of sex offenders, and the penalty for the failure of a sex offender to comply with verification and registration requirements

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

Section 1. Paragraphs (a) and (e) of subdivision 1 of section 168-b of the correction law, paragraph (a) as amended by chapter 67 of the laws of 2008 and paragraph (e) as amended by chapter 532 of the laws of 2011, are amended to read as follows:

(a) The sex offender's: name[,]; all aliases used[,]; SOCIAL SECURITY NUMBER; date of birth, sex, race, height, weight, eye color, driver's license number[,]; LICENSE PLATE NUMBER AND DESCRIPTION OF ANY MOTOR VEHICLE OWNED BY, REGISTERED TO, OR WHICH IS AVAILABLE FOR USE BY THE SEX OFFENDER; home address and/or expected place of domicile[,]; any internet accounts with internet access providers belonging to such offender [and]; internet identifiers that such offender uses; ANY SOCIAL MEDIA OR INTERNET PROFILES, INCLUDING PASSWORDS ALLOWING ACCESS TO SUCH PROFILES; THE CRIMINAL HISTORY OF THE SEX OFFENDER INCLUDING THE DATE OF ALL ARRESTS AND CONVICTIONS, THE STATUS OF PAROLE, PROBATION OR RELEASE UNDER SUPERVISION, REGISTRATION STATUS, THE EXISTENCE OF ANY OUTSTANDING ARREST WARRANTS FOR THE SEX OFFENDER; AND A PHOTOCOPY OF THE SEX OFFENDER'S DRIVER'S LICENSE OR GOVERNMENT ISSUED IDENTIFICATION CARD.

(e) [If the sex offender has been given a level two or three designation, such] THE offender's employment address and/or expected place of employment.

S 2. Subdivisions 1 and 2 of section 168-c of the correction law, as amended by chapter 11 of the laws of 2002, are amended to read as follows:

1. In the case of any sex offender, it shall be the duty of the department, hospital or local correctional facility at least ten calen-

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

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dar days prior to the release or discharge of any sex offender from a correctional facility, hospital or local correctional facility to notify the division of the contemplated release or discharge of such sex offender, informing the division in writing on a form provided by the division indicating the address at which he or she proposes to reside and the name and address of any institution of higher education at which he or she expects to be enrolled, attending or employed, whether for compensation or not, and whether he or she resides in or will reside in a facility owned or operated by such institution, AND THE SEX OFFENDER'S EMPLOYMENT ADDRESS AND/OR EXPECTED PLACE OF EMPLOYMENT. If such sex offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education, OR EMPLOYMENT ADDRESS OR PLACE OF EMPLOYMENT while on parole, such notification of the change of status shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division.

2. In the case of any sex offender on probation, it shall be the duty of the sex offender's probation officer to notify the division within forty-eight hours of the new place of residence on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education, OR EMPLOYMENT ADDRESS OR PLACE OF EMPLOYMENT while on probation, such notification of the change of status shall be sent by the sex offender's probation officer within forty-eight hours to the division on a form provided by the division.

S 3. Subdivision 2 of section 168-d of the correction law, as amended by chapter 684 of the laws of 2005, is amended to read as follows:

2. Any sex offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such sex offender shall register with the division on a form prepared by the division. The court shall require the sex offender to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the sex offender expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, AND THE SEX OFFENDER'S EMPLOYMENT ADDRESS AND/OR EXPECTED PLACE OF EMPLOYMENT, and shall report such information to the division. The court shall give one copy of the form to the sex offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the sex offender of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or

whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the court shall determine whether the offender is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. Where the court orders a sex offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such sex offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

S 4. Subdivision 1 of section 168-e of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

1. Any sex offender, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the sex offender to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the sex offender expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, AND THE SEX OFFENDER'S EMPLOYMENT ADDRESS AND/OR EXPECTED PLACE OF EMPLOYMENT, and shall report such information to the division. The facility shall give one copy of the form to the sex offender, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the sex offender a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the sex offender and sent to the division by the facility at least ten days prior to the sex offender's release or discharge.

S 5. Subdivisions 2 and 4 of section 168-f of the correction law, subdivision 2 as added by chapter 192 of the laws of 1995, paragraph (b-1) of subdivision 2 as amended by chapter 532 of the laws of 2011, paragraphs (b-2), (b-3) and (c-1) of subdivision 2 as added by section 2 of part O of chapter 56 of the laws of 2005, paragraph (c) of subdivision 2 as amended by chapter 453 of the laws of 1999 and subdivision 4

as amended by chapter 67 of the laws of 2008, are amended to read as follows:

2. For a sex offender required to register under this article on each anniversary of the sex offender's initial registration date during the period in which he OR SHE is required to register under this section the following applies:

(a) The sex offender shall mail the verification form to the division within ten calendar days after receipt of the form.

(b) The verification form shall be signed by the sex offender, and state that he OR SHE still resides at the address last reported to the division[.

(b-1) If the sex offender has been given a level two or three designation, such offender shall sign the verification form, and state that he or she] AND still is employed at the address last reported to the division.

[(b-2)] (B-1) If the sex offender has been given a level three designation, he or she shall personally appear at the law enforcement agency having jurisdiction within [twenty days of the first anniversary] THREE MONTHS of the sex offender's initial registration and every [year] THREE MONTHS thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

[(b-3)] (B-2) If the sex offender has been given a [level one or] level two designation, he or she shall personally appear at the law enforcement agency having jurisdiction within [twenty days of the third anniversary] SIX MONTHS of the sex offender's initial registration and every [three years] SIX MONTHS thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(B-3) IF THE SEX OFFENDER HAS BEEN GIVEN A LEVEL ONE DESIGNATION, HE OR SHE SHALL PERSONALLY APPEAR AT THE LAW ENFORCEMENT AGENCY HAVING JURISDICTION WITHIN TWENTY DAYS OF THE FIRST ANNIVERSARY OF THE SEX OFFENDER'S INITIAL REGISTRATION AND EVERY YEAR THEREAFTER DURING THE PERIOD OF REGISTRATION FOR THE PURPOSE OF PROVIDING A CURRENT PHOTOGRAPH OF SUCH OFFENDER. THE LAW ENFORCEMENT AGENCY HAVING JURISDICTION SHALL PHOTOGRAPH THE SEX OFFENDER AND SHALL PROMPTLY FORWARD A COPY OF SUCH PHOTOGRAPH TO THE DIVISION. FOR THE PURPOSES OF THIS PARAGRAPH, IF SUCH SEX OFFENDER IS CONFINED IN A STATE OR LOCAL CORRECTIONAL FACILITY, THE LOCAL LAW ENFORCEMENT AGENCY HAVING JURISDICTION SHALL BE THE WARDEN, SUPERINTENDENT, SHERIFF OR OTHER PERSON IN CHARGE OF THE STATE OR LOCAL CORRECTIONAL FACILITY.

(c) If the sex offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section [unless he proves that he or she has not changed his or her residence address] AND SUBJECT TO THE

PENALTIES SET FORTH IN SECTION ONE HUNDRED SIXTY-EIGHT-T OF THIS ARTICLE.

(c-1) If the sex offender, to whom a notice has been mailed at the last reported address pursuant to paragraph [b] (B) of subdivision one of section one hundred sixty-eight-b of this article, fails to personally appear at the law enforcement agency having jurisdiction, as provided in paragraph (B-1), (b-2) or (b-3) of this subdivision[, within twenty days of the anniversary of the sex offender's initial registration], or an alternate later date scheduled by the law enforcement agency having jurisdiction, he or she shall be in violation of this section. The duty to personally appear for such updated photograph shall be temporarily suspended during any period in which the sex offender is confined in any hospital or institution, and such sex offender shall personally appear for such updated photograph no later than [ninety] THIRTY days after release from such hospital or institution, or an alternate later date scheduled by the law enforcement agency having jurisdiction.

4. Any sex offender shall register with the division no later than ten calendar days after any change of NAME, address, SOCIAL MEDIA OR INTERNET PROFILES, INCLUDING PASSWORDS ALLOWING ACCESS TO SUCH PROFILES, internet accounts with internet access providers belonging to such offender, internet identifiers that such offender uses, or his or her status of enrollment, attendance, employment or residence at any institution of higher education. A fee of ten dollars, as authorized by subdivision eight of section one hundred sixty-eight-b of this article, shall be submitted by the sex offender each time such offender registers any change of NAME OR address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education. Any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status.

S 6. Section 168-t of the correction law, as amended by chapter 373 of the laws of 2007, is amended to read as follows:

S 168-t. Penalty. 1. Any sex offender required to register or to verify pursuant to the provisions of this article who fails to register or verify in the manner and within the time periods provided for in this article WITHOUT PROVING THAT HE OR SHE HAS NOT CHANGED HIS OR HER RESIDENCE ADDRESS 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. WHERE SUCH OFFENDER PROVES THAT HE OR SHE HAS NOT CHANGED HIS OR HER RESIDENCE ADDRESS HE OR SHE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

2. Any sex offender who violates the provisions of section one hundred sixty-eight-v of this article shall be guilty of a class A misdemeanor upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony.

3. ANY CONVICTION FOR A FAILURE TO REGISTER OR VERIFY, WITHOUT PROVING THAT HE OR SHE HAS NOT CHANGED HIS OR HER RESIDENCE ADDRESS, SHALL REQUIRE THE OFFENDER TO SUBMIT TO THE USE OF AN ELECTRONIC MONITORING DEVICE. 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.

4. Any such failure to register or verify 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 7. Section 168-w of the correction law, as added by chapter 192 of the laws of 1995 and as relettered by chapter 604 of the laws of 2005, is relettered section 165-x and amended and a new section 168-w is added to read as follows:

S 168-W. SUBMISSION OF FRAUDULENT INFORMATION RESPECTING IDENTITY, EMPLOYMENT, OR RESIDENCE FOR THE PURPOSE OF REGISTRATION OR VERIFICATION; PENALTY. ANY SEX OFFENDER REQUIRED TO REGISTER OR TO VERIFY PURSUANT TO THE PROVISIONS OF THIS ARTICLE, WHO WITH FRAUDULENT INTENT, SUBMITS FALSE INFORMATION RESPECTING HIS OR HER IDENTITY, EMPLOYMENT OR RESIDENCE, FOR THE PURPOSE OF, OR IN THE COURSE OF, SATISFYING HIS OR HER DUTY TO REGISTER OR TO VERIFY PURSUANT TO THE PROVISIONS OF THIS ARTICLE, SHALL BE GUILTY OF A CLASS E FELONY.

S 168-x. [Separability] SEVERABILITY. If any section of this article, or part thereof shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

S 8. The tax law is amended by adding a new section 171-z as follows:

S 171-Z. LOCATING ABSCONDING REGISTERED SEX OFFENDERS. THE COMMISSIONER SHALL BE AUTHORIZED TO CROSS REFERENCE THE SOCIAL SECURITY NUMBERS OF SEX OFFENDERS REQUIRED TO REGISTER PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW WITH INCOME TAX RETURNS MAINTAINED BY THE DEPARTMENT WHEN A REQUEST FOR SUCH CROSS REFERENCE IS RECEIVED FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR THE PURPOSE OF LOCATING THOSE REGISTERED SEX OFFENDERS WHO FAIL TO NOTIFY THE DIVISION OF ANY CHANGE OF ADDRESS, AS REQUIRED BY ARTICLE SIX-C OF THE CORRECTION LAW. THE COMMISSIONERS OF TAXATION AND FINANCE AND THE DIVISION OF CRIMINAL JUSTICE SERVICES ARE AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THIS SECTION.

S 9. Paragraphs (e) and (f) of subdivision 2 of section 70.45 of the penal law, as amended by chapter 7 of the laws of 2007, are amended and two new paragraphs (g) and (h) are added to read as follows:

(e) such period shall be not less than one and one-half years nor more than three years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class D or class E violent felony offense EXCEPT WHEN SUCH DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED UPON A CONVICTION FOR ONE OF THE CRIMES LISTED IN PARAGRAPH (G) OF THIS SUBDIVISION;

(f) such period shall be not less than two and one-half years nor more than five years whenever a determinate sentence of imprisonment is imposed pursuant to subdivision three of section 70.02 of this article upon a conviction of a class B or class C violent felony offense[.] EXCEPT WHEN SUCH DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED UPON A CONVICTION FOR ONE OF THE CRIMES LISTED IN PARAGRAPH (H) OF THIS SUBDIVISION;

(G) SUCH PERIOD SHALL BE FOR THE LIFE OF A PERSON WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED PURSUANT TO SUBDIVISION THREE OF SECTION 70.02 OF THIS ARTICLE UPON A CONVICTION OF A CLASS D VIOLENT FELONY OFFENSE WHEN THE CRIME COMMITTED WAS SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.65 WHEN THE OTHER PERSON IS LESS THAN

ELEVEN YEARS OLD OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE AS DEFINED IN SECTION 130.80 OF THIS CHAPTER;

(H) SUCH PERIOD SHALL BE FOR THE LIFE OF A PERSON WHENEVER A DETERMINATE SENTENCE OF IMPRISONMENT IS IMPOSED PURSUANT TO SUBDIVISION THREE OF SECTION 70.02 OF THIS ARTICLE UPON A CONVICTION OF A CLASS B VIOLENT FELONY OFFENSE WHEN THE CRIME COMMITTED WAS RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE AS DEFINED IN SECTION 130.50, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.70 OR COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE AS DEFINED IN SECTION 130.75 OF THIS CHAPTER.

S 10. Section 803 of the correction law is amended by adding a new subdivision 1-b to read as follows:

1-B. A PERSON SERVING A DETERMINATE SENTENCE WHO IS SUBJECT TO THE PERIOD OF POST-RELEASE SUPERVISION ESTABLISHED IN PARAGRAPH (G) OR (H) OF SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW SHALL NOT BE ENTITLED TO ANY GOOD BEHAVIOR ALLOWANCE ESTABLISHED IN THIS SECTION.

S 11. All costs associated with this chapter shall be borne by the state.

S 12. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the 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 of this act directly involved in the controversy in which the judgment shall have been rendered.

S 13. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, and shall apply to all sex offenders registered or required to register immediately prior to the effective date of this act, and to all sex offenders required to register on or after such effective date, provided however that the amendments to section 803 of the correction law made by section ten of this act shall survive the expiration and reversion of such section as provided in subdivision d of section 74 of chapter 3 of the laws of 1995, as amended.