

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. AVELLA, MAZIARZ -- 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 determi-  
nation hearings for convicted sex offenders

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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

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

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

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

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

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

21 S 2. This act shall take effect immediately.