

614--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. O'DONNELL, AUBRY, TITONE, LENTOL, CUSICK -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, the penal law, the executive law and the criminal procedure law, in relation to establishing residency restrictions for sex offenders

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

1 Section 1. Paragraph (f) of subdivision 1 of section 168-b of the
2 correction law, as relettered by chapter 10 of the laws of 2003, is
3 relettered paragraph (g) and a new paragraph (f) is added to read as
4 follows:

5 (F) IF THE SEX OFFENDER HAS BEEN GIVEN A LEVEL 2 OR 3 DESIGNATION AND
6 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
7 THIS ARTICLE, WHETHER SUCH OFFENDER IS SUBJECT TO A RESIDENCY
8 RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTI-
9 CLE.

10 S 2. Section 168-b of the correction law is amended by adding a new
11 subdivision 13 to read as follows:

12 13. THE DIVISION, UPON INITIAL REGISTRATION AND THEREAFTER IN ANNUAL
13 CORRESPONDENCE AS REQUIRED BY SUBDIVISION FOUR OF THIS SECTION, SHALL
14 ADVISE EACH SEX OFFENDER WHO IS SUBJECT TO A RESIDENCY RESTRICTION
15 PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, CONCERN-
16 ING THE TERM'S SPECIFIC DURATION AND THE ACCURATE TERMINATION DATE OF
17 SUCH RESTRICTION.

18 S 3. Subdivisions 2 and 3 of section 168-d of the correction law,
19 subdivision 2 as amended by chapter 684 of the laws of 2005 and subdivi-

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

LBD04806-02-6

1 sion 3 as amended by chapter 11 of the laws of 2002, are amended to read
2 as follows:

3 2. Any sex offender, who is released on probation or discharged upon
4 payment of a fine, conditional discharge or unconditional discharge
5 shall, prior to such release or discharge, be informed of his or her
6 duty to register under this article by the court in which he or she was
7 convicted. At the time sentence is imposed, such sex offender shall
8 register with the division on a form prepared by the division. The court
9 shall require the sex offender to read and sign such form and to
10 complete the registration portion of such form. The court shall on such
11 form obtain the address where the sex offender expects to reside upon
12 his or her release, and the name and address of any institution of high-
13 er education he or she expects to be employed by, enrolled in, attending
14 or employed, whether for compensation or not, and whether he or she
15 expects to reside in a facility owned or operated by such an institu-
16 tion, and shall report such information to the division. The court shall
17 give one copy of the form to the sex offender and shall send two copies
18 to the division which shall forward the information to the law enforce-
19 ment agencies having jurisdiction. The court shall also notify the
20 district attorney and the sex offender of the date of the determination
21 proceeding to be held pursuant to subdivision three of this section,
22 which shall be held at least forty-five days after such notice is given.
23 This notice shall include the following statement or a substantially
24 similar statement: "This proceeding is being held to determine whether
25 you will be classified as a level 3 offender (risk of repeat offense is
26 high), a level 2 offender (risk of repeat offense is moderate), or a
27 level 1 offender (risk of repeat offense is low), or whether you will be
28 designated as a sexual predator, a sexually violent offender or a predi-
29 cate sex offender, which will determine how long you must register as a
30 sex offender and how much information can be provided to the public
31 concerning your registration. IF YOU ARE CLASSIFIED AS A LEVEL 2 OR
32 LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE COURT MAY ALSO DETERMINE
33 WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY
34 RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail
35 to appear at this proceeding, without sufficient excuse, it shall be
36 held in your absence. Failure to appear may result in a longer period of
37 registration or a higher level of community notification because you are
38 not present to offer evidence or contest evidence offered by the
39 district attorney." The court shall also advise the sex offender that
40 he or she has a right to a hearing prior to the court's determination,
41 that he or she has the right to be represented by counsel at the hearing
42 and that counsel will be appointed if he or she is financially unable to
43 retain counsel. If the sex offender applies for assignment of counsel to
44 represent him or her at the hearing and counsel was not previously
45 assigned to represent the sex offender in the underlying criminal
46 action, the court shall determine whether the offender is financially
47 unable to retain counsel. If such a finding is made, the court shall
48 assign counsel to represent the sex offender pursuant to article eigh-
49 teen-B of the county law. Where the court orders a sex offender released
50 on probation, such order must include a provision requiring that he or
51 she comply with the requirements of this article. Where such sex offen-
52 der violates such provision, probation may be immediately revoked in the
53 manner provided by article four hundred ten of the criminal procedure
54 law.

55 3. For sex offenders released on probation or discharged upon payment
56 of a fine, conditional discharge or unconditional discharge, it shall be

1 the duty of the court applying the guidelines established in subdivision
2 five of section one hundred sixty-eight-l of this article to determine
3 the level of notification pursuant to subdivision six of section one
4 hundred sixty-eight-l of this article [and], whether such sex offender
5 shall be designated a sexual predator, sexually violent offender, or
6 predicate sex offender as defined in subdivision seven of section one
7 hundred sixty-eight-a of this article AND, WHEN DETERMINING THE LEVEL OF
8 NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN SUBDIVISION
9 FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A
10 SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS
11 CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO THIS ARTI-
12 CLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE
13 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least fifteen days prior to
14 the determination proceeding, the district attorney shall provide to the
15 court and the sex offender a written statement setting forth the deter-
16 minations sought by the district attorney together with the reasons for
17 seeking such determinations. The court shall allow the sex offender to
18 appear and be heard. The state shall appear by the district attorney, or
19 his or her designee, who shall bear the burden of proving the facts
20 supporting the determinations sought by clear and convincing evidence.
21 Where there is a dispute between the parties concerning the determi-
22 nations, the court shall adjourn the hearing as necessary to permit the
23 sex offender or the district attorney to obtain materials relevant to
24 the determinations from any state or local facility, hospital, institu-
25 tion, office, agency, department or division. Such materials may be
26 obtained by subpoena if not voluntarily provided to the requesting
27 party. In making the determinations, the court shall review any victim's
28 statement and any relevant materials and evidence submitted by the sex
29 offender and the district attorney and the court may consider reliable
30 hearsay evidence submitted by either party provided that it is relevant
31 to the determinations. Facts previously proven at trial or elicited at
32 the time of entry of a plea of guilty shall be deemed established by
33 clear and convincing evidence and shall not be relitigated. The court
34 shall render an order setting forth its determinations and the findings
35 of fact and conclusions of law on which the determinations are based. A
36 copy of the order shall be submitted by the court to the division. Upon
37 application of either party, the court shall seal any portion of the
38 court file or record which contains material that is confidential under
39 any state or federal statute. Either party may appeal as of right from
40 the order pursuant to the provisions of articles fifty-five, fifty-six
41 and fifty-seven of the civil practice law and rules. Where counsel has
42 been assigned to represent the sex offender upon the ground that the sex
43 offender is financially unable to retain counsel, that assignment shall
44 be continued throughout the pendency of the appeal, and the person may
45 appeal as a poor person pursuant to article eighteen-B of the county
46 law.

47 S 4. Subdivision 2 of section 168-k of the correction law, as amended
48 by chapter 684 of the laws of 2005, is amended to read as follows:

49 2. The division shall advise the board that the sex offender has
50 established residence in this state. The board shall determine whether
51 the sex offender is required to register with the division. If it is
52 determined that the sex offender is required to register, the division
53 shall notify the sex offender of his or her duty to register under this
54 article and shall require the sex offender to sign a form as may be
55 required by the division acknowledging that the duty to register and the
56 procedure for registration has been explained to the sex offender. The

1 division shall obtain on such form the address where the sex offender
2 expects to reside within the state and the sex offender shall retain one
3 copy of the form and send two copies to the division which shall provide
4 the information to the law enforcement agency having jurisdiction where
5 the sex offender expects to reside within this state. No later than
6 thirty days prior to the board making a recommendation, the sex offender
7 shall be notified that his or her case is under review and that he or
8 she is permitted to submit to the board any information relevant to the
9 review. After reviewing any information obtained, and applying the
10 guidelines established in subdivision five of section one hundred
11 sixty-eight-1 of this article, the board shall within sixty calendar
12 days make a recommendation regarding the level of notification pursuant
13 to subdivision six of section one hundred sixty-eight-1 of this article
14 [and], whether such sex offender shall be designated a sexual predator,
15 sexually violent offender, or predicate sex offender as defined in
16 subdivision seven of section one hundred sixty-eight-a of this article
17 AND, WHEN DETERMINING THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDE-
18 LINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED
19 SIXTY-EIGHT-L OF THIS ARTICLE, WHETHER A SEX OFFENDER, CLASSIFIED AS A
20 LEVEL 2 OR LEVEL 3 OFFENDER WHO STANDS CONVICTED OF A FELONY WHICH
21 REQUIRES REGISTRATION PURSUANT TO THIS ARTICLE, WILL BE SUBJECT TO A
22 RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF
23 THIS ARTICLE. This recommendation shall be confidential and shall not
24 be available for public inspection. It shall be submitted by the board
25 to the county court or supreme court and to the district attorney in the
26 county of residence of the sex offender and to the sex offender. It
27 shall be the duty of the county court or supreme court in the county of
28 residence of the sex offender, applying the guidelines established in
29 subdivision five of section one hundred sixty-eight-1 of this article,
30 to determine the level of notification pursuant to subdivision six of
31 section one hundred sixty-eight-1 of this article [and], whether such
32 sex offender shall be designated a sexual predator, sexually violent
33 offender, or predicate sex offender as defined in subdivision seven of
34 section one hundred sixty-eight-a of this article AND, WHEN DETERMINING
35 THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED IN
36 SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE,
37 WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO
38 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
39 THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
40 SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. At least thirty days
41 prior to the determination proceeding, such court shall notify the
42 district attorney and the sex offender, in writing, of the date of the
43 determination proceeding and the court shall also provide the district
44 attorney and sex offender with a copy of the recommendation received
45 from the board and any statement of the reasons for the recommendation
46 received from the board. This notice shall include the following state-
47 ment or a substantially similar statement: "This proceeding is being
48 held to determine whether you will be classified as a level 3 offender
49 (risk of repeat offense is high), a level 2 offender (risk of repeat
50 offense is moderate), or a level 1 offender (risk of repeat offense is
51 low), or whether you will be designated as a sexual predator, a sexually
52 violent offender or a predicate sex offender, which will determine how
53 long you must register as a sex offender and how much information can be
54 provided to the public concerning your registration. IF YOU ARE CLASSI-
55 FIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX OFFENSE, THE
56 COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY

1 RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT
2 RESIDENCE. If you fail to appear at this proceeding, without sufficient
3 excuse, it shall be held in your absence. Failure to appear may result
4 in a longer period of registration or a higher level of community
5 notification because you are not present to offer evidence or contest
6 evidence offered by the district attorney." The court shall also advise
7 the sex offender that he or she has a right to a hearing prior to the
8 court's determination, that he or she has the right to be represented by
9 counsel at the hearing and that counsel will be appointed if he or she
10 is financially unable to retain counsel. A returnable form shall be
11 enclosed in the court's notice to the sex offender on which the sex
12 offender may apply for assignment of counsel. If the sex offender
13 applies for assignment of counsel and the court finds that the offender
14 is financially unable to retain counsel, the court shall assign counsel
15 to represent the sex offender pursuant to article eighteen-B of the
16 county law. If the district attorney seeks a determination that differs
17 from the recommendation submitted by the board, at least ten days prior
18 to the determination proceeding the district attorney shall provide to
19 the court and the sex offender a statement setting forth the determi-
20 nations sought by the district attorney together with the reasons for
21 seeking such determinations. The court shall allow the sex offender to
22 appear and be heard. The state shall appear by the district attorney, or
23 his or her designee, who shall bear the burden of proving the facts
24 supporting the determinations sought by clear and convincing evidence.
25 It shall be the duty of the court applying the guidelines established in
26 subdivision five of section one hundred sixty-eight-1 of this article to
27 determine the level of notification pursuant to subdivision six of
28 section one hundred sixty-eight-1 of this article [and], whether such
29 sex offender shall be designated a sexual predator, sexually violent
30 offender, or predicate sex offender as defined in subdivision seven of
31 section one hundred sixty-eight-a of this article AND, WHEN DETERMINING
32 THE LEVEL OF NOTIFICATION AND APPLYING THE GUIDELINES ESTABLISHED BY
33 SUBDIVISION FIVE-A OF SECTION ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE,
34 WHETHER A SEX OFFENDER, CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER WHO
35 STANDS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT TO
36 THIS ARTICLE, WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
37 SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. Where there is a
38 dispute between the parties concerning the determinations, the court
39 shall adjourn the hearing as necessary to permit the sex offender or the
40 district attorney to obtain materials relevant to the determinations
41 from the state board of examiners of sex offenders or any state or local
42 facility, hospital, institution, office, agency, department or division.
43 Such materials may be obtained by subpoena if not voluntarily provided
44 to the requesting party. In making the determinations the court shall
45 review any victim's statement and any relevant materials and evidence
46 submitted by the sex offender and the district attorney and the recom-
47 mendation and any material submitted by the board, and may consider
48 reliable hearsay evidence submitted by either party, provided that it is
49 relevant to the determinations. If available, facts proven at trial or
50 elicited at the time of a plea of guilty shall be deemed established by
51 clear and convincing evidence and shall not be relitigated. The court
52 shall render an order setting forth its determinations and the findings
53 of fact and conclusions of law on which the determinations are based. A
54 copy of the order shall be submitted by the court to the division. Upon
55 application of either party, the court shall seal any portion of the
56 court file or record which contains material that is confidential under

1 any state or federal statute. Either party may appeal as of right from
2 the order pursuant to the provisions of articles fifty-five, fifty-six
3 and fifty-seven of the civil practice law and rules. Where counsel has
4 been assigned to represent the sex offender upon the ground that the sex
5 offender is financially unable to retain counsel, that assignment shall
6 be continued throughout the pendency of the appeal, and the person may
7 appeal as a poor person pursuant to article eighteen-B of the county
8 law.

9 S 5. Section 168-1 of the correction law is amended by adding a new
10 subdivision 5-a to read as follows:

11 5-A. THE BOARD SHALL DEVELOP GUIDELINES AND PROCEDURES TO ASSESS
12 WHETHER TO RECOMMEND THAT A SEX OFFENDER WHO STANDS CONVICTED OF A FELO-
13 NY SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION
14 ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. SUCH GUIDELINES SHALL INCLUDE
15 THE FOLLOWING:

16 (A) WHETHER A RESIDENCY RESTRICTION WOULD ADVERSELY IMPACT THE
17 OFFENDER'S SUCCESSFUL REENTRY AND REINTEGRATION INTO SOCIETY;

18 (B) WHETHER A RESIDENCY RESTRICTION IS NECESSARY, BASED ON THE
19 OFFENDER'S CURRENT BEHAVIOR AND PRESENT AND PROSPECTIVE LIVING ARRANGE-
20 MENTS TO PROTECT PUBLIC SAFETY;

21 (C) THE ABILITY OF THE OFFENDER TO OBTAIN PERMANENT AND STABLE HOUSING
22 IN ORDER TO REDUCE THE LIKELIHOOD THAT THE OFFENDER WILL BE TRANSIENT;

23 (D) THE ACCESSIBILITY TO SUPPORTIVE SERVICES, INCLUDING, BUT NOT
24 LIMITED TO, LOCALLY AVAILABLE SEX OFFENDER TREATMENT PROGRAMS THAT HAVE
25 DEMONSTRATED EFFECTIVENESS IN REDUCING SEX OFFENDER RECIDIVISM AND
26 INCREASING PUBLIC SAFETY;

27 (E) THE ABILITY OF THE OFFENDER TO FIND GAINFUL AND STABLE EMPLOYMENT;
28 AND

29 (F) WHETHER THE OFFENSE THAT REQUIRES THE OFFENDER TO REGISTER PURSU-
30 ANT TO THIS ARTICLE WAS COMMITTED AGAINST A MINOR CHILD.

31 S 6. The opening paragraph of subdivision 6 of section 168-1 of the
32 correction law, as amended by chapter 11 of the laws of 2002, is amended
33 to read as follows:

34 Applying [these] THE guidelines ESTABLISHED IN SUBDIVISION FIVE OF
35 THIS SECTION, the board shall within sixty calendar days prior to the
36 discharge, parole, release to post-release supervision or release of a
37 sex offender make a recommendation which shall be confidential and shall
38 not be available for public inspection, to the sentencing court as to
39 whether such sex offender warrants the designation of sexual predator,
40 sexually violent offender, or predicate sex offender as defined in
41 subdivision seven of section one hundred sixty-eight-a of this article.
42 In addition, the guidelines ESTABLISHED IN SUBDIVISION FIVE OF THIS
43 SECTION shall be applied by the board to make a recommendation to the
44 sentencing court which shall be confidential and shall not be available
45 for public inspection, providing for one of the [following] three levels
46 of notification DESCRIBED IN PARAGRAPHS (A), (B), AND (C) OF THIS SUBDI-
47 VISION depending upon the degree of the risk of re-offense by the sex
48 offender. FURTHER, WHEN THE BOARD MAKES A RECOMMENDATION TO THE SENTENC-
49 ING COURT THAT A SEX OFFENDER BE CLASSIFIED AS A LEVEL 2 OR LEVEL 3
50 OFFENDER AND SUCH OFFENDER STANDS CONVICTED OF A FELONY WHICH REQUIRES
51 REGISTRATION PURSUANT TO THIS ARTICLE, THE BOARD SHALL ALSO APPLY THE
52 GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF THIS SECTION AND MAY
53 MAKE A RECOMMENDATION REGARDING WHETHER SUCH OFFENDER SHOULD BE SUBJECT
54 TO A RESIDENCY RESTRICTION AS DESCRIBED IN SECTION ONE HUNDRED
55 SIXTY-EIGHT-W OF THIS ARTICLE.

1 S 7. Subdivision 7 of section 168-1 of the correction law, as amended
2 by chapter 11 of the laws of 2002, is amended to read as follows:

3 7. Upon request by the court, pursuant to section one hundred sixty-
4 eight-o of this article, the board shall provide an updated report
5 pertaining to the sex offender petitioning for relief of the duty to
6 register [or], for a modification of his or her level of notification OR
7 FOR MODIFICATION OR TERMINATION OF A RESIDENCY RESTRICTION IMPOSED BY
8 THE SENTENCING COURT.

9 S 8. Subdivisions 2 and 3 of section 168-n of the correction law,
10 subdivision 2 as amended by chapter 453 of the laws of 1999 and subdivi-
11 sion 3 as amended by chapter 684 of the laws of 2005, are amended to
12 read as follows:

13 2. In addition, applying the guidelines established in subdivision
14 five of section one hundred sixty-eight-l of this article, the sentenc-
15 ing court shall also make a determination with respect to the level of
16 notification, after receiving a recommendation from the board pursuant
17 to section one hundred sixty-eight-l of this article. [Both] FURTHER,
18 WHEN THE COURT CLASSIFIES A SEX OFFENDER AS A LEVEL 2 OR LEVEL 3 OFFEN-
19 DER AND SUCH OFFENDER STANDS CONVICTED OF A FELONY WHICH REQUIRES REGIS-
20 TRATION PURSUANT TO THIS ARTICLE AND THE BOARD HAS RECOMMENDED THAT SUCH
21 OFFENDER BE SUBJECT TO A RESIDENCY RESTRICTION, THE COURT SHALL APPLY
22 THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION ONE HUNDRED
23 SIXTY-EIGHT-L OF THIS ARTICLE AND MAKE A DETERMINATION WITH RESPECT TO
24 WHETHER SUCH OFFENDER SHALL BE SUBJECT TO A RESIDENCY RESTRICTION IN
25 ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. ALL
26 determinations of the sentencing court PURSUANT TO THIS SECTION shall be
27 made thirty calendar days prior to discharge, parole or release.

28 3. No later than thirty days prior to the board's recommendation, the
29 sex offender shall be notified that his or her case is under review and
30 that he or she is permitted to submit to the board any information rele-
31 vant to the review. Upon receipt of the board's recommendation, the
32 sentencing court shall determine whether the sex offender was previously
33 found to be eligible for assigned counsel in the underlying case. Where
34 such a finding was previously made, the court shall assign counsel to
35 represent the offender, pursuant to article eighteen-B of the county
36 law. At least twenty days prior to the determination proceeding, the
37 sentencing court shall notify the district attorney, the sex offender
38 and the sex offender's counsel, in writing, of the date of the determi-
39 nation proceeding and shall also provide the district attorney, the sex
40 offender and the sex offender's counsel with a copy of the recommenda-
41 tion received from the board and any statement of the reasons for the
42 recommendation received from the board. This notice shall include the
43 following statement or a substantially similar statement: "This
44 proceeding is being held to determine whether you will be classified as
45 a level 3 offender (risk of repeat offense is high), a level 2 offender
46 (risk of repeat offense is moderate), or a level 1 offender (risk of
47 repeat offense is low), or whether you will be designated as a sexual
48 predator, a sexually violent offender or a predicate sex offender, which
49 will determine how long you must register as a sex offender and how much
50 information can be provided to the public concerning your registration.
51 IF YOU ARE CLASSIFIED AS A LEVEL 2 OR LEVEL 3 OFFENDER FOR A FELONY SEX
52 OFFENSE, THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A
53 RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR
54 PERMANENT RESIDENCE. If you fail to appear at this proceeding, without
55 sufficient excuse, it shall be held in your absence. Failure to appear
56 may result in a longer period of registration or a higher level of

1 community notification because you are not present to offer evidence or
2 contest evidence offered by the district attorney." The written notice
3 to the sex offender shall also advise the offender that he or she has a
4 right to a hearing prior to the court's determination, and that he or
5 she has the right to be represented by counsel at the hearing. If coun-
6 sel has been assigned to represent the offender at the determination
7 proceeding, the notice shall also provide the name, address and tele-
8 phone number of the assigned counsel. Where counsel has not been
9 assigned, the notice shall advise the sex offender that counsel will be
10 appointed if he or she is financially unable to retain counsel, and a
11 returnable form shall be enclosed in the court's notice to the sex
12 offender on which the sex offender may apply for assignment of counsel.
13 If the sex offender applies for assignment of counsel and the court
14 finds that the offender is financially unable to retain counsel, the
15 court shall assign counsel to represent the sex offender pursuant to
16 article eighteen-B of the county law. If the district attorney seeks a
17 determination that differs from the recommendation submitted by the
18 board, at least ten days prior to the determination proceeding the
19 district attorney shall provide to the court and the sex offender a
20 statement setting forth the determinations sought by the district attor-
21 ney together with the reasons for seeking such determinations. The court
22 shall allow the sex offender to appear and be heard. The state shall
23 appear by the district attorney, or his or her designee, who shall bear
24 the burden of proving the facts supporting the determinations sought by
25 clear and convincing evidence. Where there is a dispute between the
26 parties concerning the determinations, the court shall adjourn the hear-
27 ing as necessary to permit the sex offender or the district attorney to
28 obtain materials relevant to the determinations from the state board of
29 examiners of sex offenders or any state or local facility, hospital,
30 institution, office, agency, department or division. Such materials may
31 be obtained by subpoena if not voluntarily provided to the requesting
32 party. In making the determinations the court shall review any victim's
33 statement and any relevant materials and evidence submitted by the sex
34 offender and the district attorney and the recommendation and any mate-
35 rials submitted by the board, and may consider reliable hearsay evidence
36 submitted by either party, provided that it is relevant to the determi-
37 nations. Facts previously proven at trial or elicited at the time of
38 entry of a plea of guilty shall be deemed established by clear and
39 convincing evidence and shall not be relitigated. The court shall render
40 an order setting forth its determinations and the findings of fact and
41 conclusions of law on which the determinations are based. A copy of the
42 order shall be submitted by the court to the division. Upon application
43 of either party, the court shall seal any portion of the court file or
44 record which contains material that is confidential under any state or
45 federal statute. Either party may appeal as of right from the order
46 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
47 seven of the civil practice law and rules. Where counsel has been
48 assigned to represent the sex offender upon the ground that the sex
49 offender is financially unable to retain counsel, that assignment shall
50 be continued throughout the pendency of the appeal, and the person may
51 appeal as a poor person pursuant to article eighteen-B of the county
52 law.

53 S 9. The section heading of section 168-o of the correction law, as
54 amended by chapter 453 of the laws of 1999, is amended and a new subdi-
55 vision 2-a is added to read as follows:

1 Petition for relief or modification OF LEVEL OF NOTIFICATION AND/OR
2 RESIDENCY RESTRICTION.

3 2-A. ANY SEX OFFENDER SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO
4 THIS ARTICLE MAY PETITION THE COURT WHICH IMPOSED SUCH RESTRICTION FOR
5 AN ORDER TERMINATING OR MODIFYING SUCH RESIDENCY RESTRICTION. THE PETI-
6 TION SHALL SET FORTH THE REASONS FOR SEEKING SUCH MODIFICATION OR TERMI-
7 NATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING THE FACTS
8 SUPPORTING THE REQUESTED MODIFICATION OR TERMINATION BY CLEAR AND
9 CONVINCING EVIDENCE. SUCH A PETITION SHALL NOT BE CONSIDERED MORE THAN
10 ANNUALLY. THE DISTRICT ATTORNEY AND THE SEX OFFENDER MAY APPEAL AS OF
11 RIGHT FROM AN ORDER ISSUED UNDER THIS SUBDIVISION PURSUANT TO THE
12 PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE
13 CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRE-
14 SENT THE SEX OFFENDER UPON THE GROUND THAT THE SEX OFFENDER IS FINAN-
15 CIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED
16 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY APPEAL AS A
17 POOR PERSON PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

18 S 10. Section 168-o of the correction law is amended by adding a new
19 subdivision 3-a to read as follows:

20 3-A. PRIOR TO THE EXPIRATION OF A RESIDENCY RESTRICTION ORDERED PURSU-
21 ANT TO SECTION ONE HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE, THE DISTRICT
22 ATTORNEY MAY FILE A PETITION WITH THE SENTENCING COURT OR WITH THE COURT
23 WHICH ORDERED THE RESIDENCY RESTRICTION TO EXTEND THE DURATION OF SUCH
24 RESIDENCY RESTRICTION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION ONE
25 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE. THE PETITION SHALL SET FORTH THE
26 REASONS FOR SEEKING TO EXTEND THE DURATION OF SUCH RESIDENCY
27 RESTRICTION. THE DISTRICT ATTORNEY SHALL BEAR THE BURDEN OF PROVING NEW
28 FACTS AND CIRCUMSTANCES THAT WARRANT THE REQUESTED EXTENSION, BY CLEAR
29 AND CONVINCING EVIDENCE. IN THE EVENT THAT THE DISTRICT ATTORNEY'S PETI-
30 TION IS GRANTED, THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM THE ORDER,
31 PURSUANT TO THE PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-
32 SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN
33 ASSIGNED TO REPRESENT THE OFFENDER UPON THE GROUND THAT HE OR SHE IS
34 FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED
35 THROUGHOUT THE PENDENCY OF THE APPEAL, AND THE PERSON MAY PROCEED AS A
36 POOR PERSON, PURSUANT TO ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

37 S 11. Subdivision 4 of section 168-o of the correction law, as added
38 by chapter 453 of the laws of 1999, is amended to read as follows:

39 4. Upon receipt of a petition submitted pursuant to subdivision one,
40 two [or], TWO-A, three, OR THREE-A of this section, the court shall
41 forward a copy of the petition to the board and request an updated
42 recommendation pertaining to the sex offender and shall provide a copy
43 of the petition to the other party. The court shall also advise the sex
44 offender that he or she has the right to be represented by counsel at
45 the hearing and counsel will be appointed if he or she is financially
46 unable to retain counsel. A returnable form shall be enclosed in the
47 court's notice to the sex offender on which the sex offender may apply
48 for assignment of counsel. If the sex offender applies for assignment
49 of counsel and the court finds that the offender is financially unable
50 to retain counsel, the court shall assign counsel to represent the
51 offender, pursuant to article eighteen-B of the county law. Where the
52 petition was filed by a district attorney, at least thirty days prior to
53 making an updated recommendation the board shall notify the sex offender
54 and his or her counsel that the offender's case is under review and he
55 or she is permitted to submit to the board any information relevant to
56 the review. The board's updated recommendation on the sex offender

1 shall be confidential and shall not be available for public inspection.
2 After receiving an updated recommendation from the board concerning a
3 sex offender, the court shall, at least thirty days prior to ruling upon
4 the petition, provide a copy of the updated recommendation to the sex
5 offender, the sex offender's counsel and the district attorney and noti-
6 fy them, in writing, of the date set by the court for a hearing on the
7 petition. After reviewing the recommendation received from the board and
8 any relevant materials and evidence submitted by the sex offender and
9 the district attorney, the court may grant or deny the petition. The
10 court may also consult with the victim prior to making a determination
11 on the petition. The court shall render an order setting forth its
12 determination, and the findings of fact and conclusions of law on which
13 the determination is based. If the petition is granted, it shall be the
14 obligation of the court to submit a copy of its order to the division.
15 Upon application of either party, the court shall seal any portion of
16 the court file or record which contains material that is confidential
17 under any state or federal statute.

18 S 12. Section 168-t of the correction law, as amended by chapter 373
19 of the laws of 2007, is amended to read as follows:

20 S 168-t. Penalty. Any sex offender required to register or to verify
21 pursuant to the provisions of this article who fails to register or
22 verify in the manner and within the time periods provided for in this
23 article shall be guilty of a class E felony upon conviction for the
24 first offense, and upon conviction for a second or subsequent offense
25 shall be guilty of a class D felony. Any sex offender who violates the
26 provisions of section one hundred sixty-eight-v of this article OR KNOW-
27 INGLY VIOLATES A RESIDENCY RESTRICTION IMPOSED PURSUANT TO SECTION ONE
28 HUNDRED SIXTY-EIGHT-W OF THIS ARTICLE shall be guilty of a class A
29 misdemeanor upon conviction for the first offense, and upon conviction
30 for a second or subsequent offense shall be guilty of a class D felony.
31 Any such failure to register or verify may also be the basis for revoca-
32 tion of parole pursuant to section two hundred fifty-nine-i of the exec-
33 utive law or the basis for revocation of probation pursuant to article
34 four hundred ten of the criminal procedure law.

35 S 13. Section 168-w of the correction law, as relettered by chapter
36 604 of the laws of 2005, is relettered section 168-x and a new section
37 168-w is added to read as follows:

38 S 168-w. RESIDENCY RESTRICTION FOR CERTAIN SEX OFFENDERS. 1. PURSUANT
39 TO SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-D, SUBDIVISION
40 TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-K AND SUBDIVISION TWO OF SECTION
41 ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE, WHEN THE COURT WHICH MAKES
42 THE DETERMINATION REGARDING THE LEVEL OF NOTIFICATION OF A SEX OFFENDER
43 CLASSIFIES SUCH OFFENDER AS A LEVEL 2 OR LEVEL 3 OFFENDER AND SUCH
44 OFFENDER WAS CONVICTED OF A FELONY WHICH REQUIRES REGISTRATION PURSUANT
45 TO THIS ARTICLE AND, WHERE APPLICABLE, THE BOARD HAS RECOMMENDED THAT
46 SUCH OFFENDER BE SUBJECT TO A RESIDENCY RESTRICTION, THE COURT MAY ORDER
47 THAT SUCH OFFENDER COMPLY WITH A RESIDENCY RESTRICTION ACCORDING TO THIS
48 SECTION. SUCH RESIDENCY RESTRICTION MAY BE IMPOSED ONLY AFTER THE COURT
49 HAS APPLIED THE GUIDELINES ESTABLISHED IN SUBDIVISION FIVE-A OF SECTION
50 ONE HUNDRED SIXTY-EIGHT-L OF THIS ARTICLE.

51 2. WHEN THE COURT DETERMINES THAT A RESIDENCY RESTRICTION IS NECESSARY
52 PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE COURT MAY ORDER THAT THE
53 SEX OFFENDER BE PROHIBITED FROM KNOWINGLY ESTABLISHING HIS OR HER PERMA-
54 NENT RESIDENCE WITHIN UP TO ONE THOUSAND FEET OF ANY SCHOOL GROUNDS, AS
55 THE TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION
56 220.00 OF THE PENAL LAW. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM

1 PERMANENT RESIDENCE SHALL MEAN THE PLACE WHERE THE OFFENDER MAINTAINS A
2 FIXED, PERMANENT AND PRINCIPAL HOME AND TO WHICH HE OR SHE, WHENEVER
3 TEMPORARILY AWAY, INTENDS TO RETURN. PERMANENT RESIDENCE SHALL NOT
4 INCLUDE TEMPORARY OR TRANSITIONAL HOUSING SUCH AS A SHELTER, RESIDENTIAL
5 TREATMENT PROGRAM, OR OTHER SIMILAR TEMPORARY OR TRANSIENT HOUSING.

6 3. THE COURT SHALL DETERMINE THE DURATION OF THE RESIDENCY RESTRICTION
7 IMPOSED PURSUANT TO THIS SECTION PROVIDED, HOWEVER, THAT SUCH
8 RESTRICTION SHALL NOT APPLY FOR MORE THAN TEN YEARS AFTER THE LATER OF
9 THE OFFENDER'S RELEASE FROM JAIL OR PRISON OR THE PERIOD OR TERM OF
10 PROBATION, PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION FOR
11 THE OFFENSE WHICH REQUIRES THE OFFENDER TO REGISTER AS A SEX OFFENDER
12 PURSUANT TO THIS ARTICLE. IN CALCULATING THE DURATION OF THE RESIDENCY
13 RESTRICTION, ANY PERIOD OF TIME DURING WHICH THE OFFENDER IS INCARCERAT-
14 ED FOR ANY REASON AFTER SUCH RESIDENCY RESTRICTION IS ORDERED SHALL BE
15 EXCLUDED AND THE DURATION OF THE RESTRICTION SHALL BE EXTENDED BY A
16 PERIOD OR PERIODS EQUAL TO THE TIME OF SUCH INCARCERATION.

17 4. WHERE THE COURT HAS GRANTED A PETITION TO EXTEND THE DURATION OF A
18 RESIDENCY RESTRICTION PURSUANT TO SUBDIVISIONS THREE-A AND FOUR OF
19 SECTION ONE HUNDRED SIXTY-EIGHT-O OF THIS ARTICLE, SUCH EXTENSION MAY BE
20 FOR A PERIOD OF UP TO FIVE YEARS.

21 S 14. Paragraph (a) of subdivision 4-a of section 65.10 of the penal
22 law, as amended by chapter 67 of the laws of 2008, is amended to read as
23 follows:

24 (a) When imposing a sentence of probation or conditional discharge
25 upon a person convicted of an offense defined in article one hundred
26 thirty, two hundred thirty-five or two hundred sixty-three of this chap-
27 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim
28 of such offense was under the age of eighteen at the time of such
29 offense or such person has been designated a level three sex offender
30 pursuant to subdivision six of section [168-1] ONE HUNDRED SIXTY-EIGHT-L
31 of the correction law, the court shall require, as a mandatory condition
32 of such sentence, that such sentenced offender shall refrain from know-
33 ingly entering into or upon any school grounds, as that term is defined
34 in PARAGRAPH (A) OF subdivision fourteen of section 220.00 of this chap-
35 ter, or any other facility or institution primarily used for the care or
36 treatment of persons under the age of eighteen while one or more of such
37 persons under the age of eighteen are present, provided however, that
38 when such sentenced offender is a registered student or participant or
39 an employee of such facility or institution or entity contracting there-
40 with or has a family member enrolled in such facility or institution,
41 such sentenced offender may, with the written authorization of his or
42 her probation officer or the court and the superintendent or chief
43 administrator of such facility, institution or grounds, enter such
44 facility, institution or upon such grounds for the limited purposes
45 authorized by the probation officer or the court and superintendent or
46 chief officer. Nothing in this subdivision shall be construed as
47 restricting any lawful condition of supervision that may be imposed on
48 such sentenced offender.

49 S 15. Subdivision 14 of section 259-c of the executive law, as amended
50 by section 38-b of subpart A of part C of chapter 62 of the laws of
51 2011, is amended to read as follows:

52 14. notwithstanding any other provision of law to the contrary, where
53 a person serving a sentence for an offense defined in article one
54 hundred thirty, one hundred thirty-five or two hundred sixty-three of
55 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
56 the victim of such offense was under the age of eighteen at the time of

1 such offense or such person has been designated a level three sex offen-
2 der pursuant to subdivision six of section one hundred sixty-eight-1 of
3 the correction law, is released on parole or conditionally released
4 pursuant to subdivision one or two of this section, the board shall
5 require, as a mandatory condition of such release, that such sentenced
6 offender shall refrain from knowingly entering into or upon any school
7 grounds, as that term is defined in PARAGRAPH (A) OF subdivision four-
8 teen of section 220.00 of the penal law, or any other facility or insti-
9 tution primarily used for the care or treatment of persons under the age
10 of eighteen while one or more of such persons under the age of eighteen
11 are present, provided however, that when such sentenced offender is a
12 registered student or participant or an employee of such facility or
13 institution or entity contracting therewith or has a family member
14 enrolled in such facility or institution, such sentenced offender may,
15 with the written authorization of his or her parole officer and the
16 superintendent or chief administrator of such facility, institution or
17 grounds, enter such facility, institution or upon such grounds for the
18 limited purposes authorized by the parole officer and superintendent or
19 chief officer. Nothing in this subdivision shall be construed as
20 restricting any lawful condition of supervision that may be imposed on
21 such sentenced offender.

22 S 16. The opening paragraph of subdivision 4 of section 530.13 of the
23 criminal procedure law, as chapter 240 of the laws of 2015, is amended
24 to read as follows:

25 Upon sentencing on a conviction for any offense, where the court has
26 not issued an order of protection pursuant to section 530.12 of this
27 article, the court may, in addition to any other disposition, including
28 a conditional discharge or youthful offender adjudication, enter an
29 order of protection. Where a temporary order of protection was issued,
30 the court shall state on the record the reasons for issuing or not issu-
31 ing an order of protection. The duration of such an order shall be fixed
32 by the court and; (A) in the case of a felony conviction, shall not
33 exceed the greater of: (i) eight years from the date of such sentencing,
34 except where the sentence is or includes a sentence of probation on a
35 conviction for a felony sexual assault, as provided in subparagraph
36 (iii) of paragraph (a) of subdivision three of section 65.00 of the
37 penal law, in which case, ten years from the date of such sentencing, or
38 (ii) eight years from the date of the expiration of the maximum term of
39 an indeterminate or the term of a determinate sentence of imprisonment
40 actually imposed; or (B) in the case of a conviction for a class A
41 misdemeanor, shall not exceed the greater of: (i) five years from the
42 date of such sentencing, except where the sentence is or includes a
43 sentence of probation on a conviction for a misdemeanor sexual assault,
44 as provided in subparagraph (ii) of paragraph (b) of subdivision three
45 of section 65.00 of the penal law, in which case, six years from the
46 date of such sentencing or (ii) five years from the date of the expira-
47 tion of the maximum term of a definite or intermittent term actually
48 imposed; or (C) in the case of a conviction for any other offense, shall
49 not exceed the greater of: (i) two years from the date of sentencing, or
50 (ii) two years from the date of the expiration of the maximum term of a
51 definite or intermittent term actually imposed, PROVIDED, HOWEVER, THAT
52 IN THE CASE OF A CONVICTION FOR AN OFFENSE FOR WHICH REGISTRATION AS A
53 SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION
54 ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, AND THE VICTIM OF SUCH
55 OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, THE
56 DURATION OF AN ORDER OF PROTECTION ISSUED PURSUANT TO THIS SUBDIVISION

1 MAY BE, BUT SHALL NOT EXCEED, THE GREATER OF THE APPLICABLE DURATION
2 PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS SUBDIVISION OR UNTIL
3 THE VICTIM OF SUCH OFFENSE ATTAINS THE AGE OF EIGHTEEN. For purposes of
4 determining the duration of an order of protection entered pursuant to
5 this subdivision, a conviction shall be deemed to include a conviction
6 that has been replaced by a youthful offender adjudication. In addition
7 to any other conditions such an order may require that the defendant:

8 17. The opening paragraph of subdivision 4 of section 530.13 of the
9 criminal procedure law, as amended by chapter 9 of the laws of 2011, is
10 amended to read as follows:

11 Upon sentencing on a conviction for any offense, where the court has
12 not issued an order of protection pursuant to section 530.12 of this
13 article, the court may, in addition to any other disposition, including
14 a conditional discharge or youthful offender adjudication, enter an
15 order of protection. Where a temporary order of protection was issued,
16 the court shall state on the record the reasons for issuing or not issu-
17 ing an order of protection. The duration of such an order shall be fixed
18 by the court and, in the case of a felony conviction, shall not exceed
19 the greater of: (i) five years from the date of such sentencing, or (ii)
20 three years from the date of the expiration of the maximum term of an
21 indeterminate sentence of imprisonment actually imposed; or in the case
22 of a conviction for a class A misdemeanor, shall not exceed three years
23 from the date of such sentencing; or in the case of a conviction for any
24 other offense, shall not exceed one year from the date of sentencing,
25 PROVIDED, HOWEVER, THAT IN THE CASE OF A CONVICTION FOR AN OFFENSE FOR
26 WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION
27 TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW,
28 AND THE VICTIM OF SUCH OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME
29 OF SUCH OFFENSE, THE DURATION OF AN ORDER OF PROTECTION ISSUED PURSUANT
30 TO THIS SUBDIVISION MAY BE, BUT SHALL NOT EXCEED, THE GREATER OF THE
31 APPLICABLE DURATION PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS
32 SUBDIVISION OR UNTIL THE VICTIM OF SUCH OFFENSE ATTAINS THE AGE OF EIGH-
33 TEEN. For purposes of determining the duration of an order of
34 protection entered pursuant to this subdivision, a conviction shall be
35 deemed to include a conviction that has been replaced by a youthful
36 offender adjudication. In addition to any other conditions such an order
37 may require that the defendant:

38 S 18. No municipal corporation, as defined in section 2 of the general
39 municipal law, shall, on or after the effective date of the chapter of
40 the laws of 2016 that created this section, enact any local law, ordi-
41 nance, code, rule or regulation requiring a sex offender, as such term
42 is defined by section 168-a of the correction law, to comply with a
43 residency restriction. The provisions of this act shall invalidate and
44 preempt any such local law, ordinance, code, rule or regulation enacted
45 after the effective date of the chapter of the laws of 2015 that added
46 this section.

47 S 19. The provisions of this act shall preempt and invalidate any
48 local law, ordinance, code, rule or regulation enacted before the effec-
49 tive date of the chapter of the laws of 2016 that added this section
50 requiring a sex offender, as such term is defined by section 168-a of
51 the correction law, to comply with a residency restriction, except that
52 nothing in this act shall preclude any local probation department from
53 enforcing any lawful condition of probation that may be imposed on a
54 sentenced offender.

55 S 20. The district attorney may file a petition to seek the imposition
56 of a residency restriction for: (i) a sex offender classified as a level

1 2 or 3 offender who stands convicted of a felony which requires regis-
2 tration pursuant to article 6-C of the correction law and who is at
3 liberty on the effective date of this act; and (ii) a sex offender who
4 was convicted of a felony which requires registration pursuant to arti-
5 cle 6-C of the correction law prior to the effective date of this act
6 and is incarcerated in a state or local correctional facility on the
7 effective date of this act and is classified as a level 2 or 3 offender.
8 A petition filed pursuant to paragraph (i) of this section shall be
9 filed with the sentencing court or the court which made the determi-
10 nation regarding the level of notification of such offender within one
11 year of the effective date of this act. A petition filed pursuant to
12 paragraph (ii) of this section shall be filed with the sentencing court
13 or the court which made the determination regarding the level of notifi-
14 cation of such offender within one year of the release of such offender
15 from incarceration. The petition shall set forth the reasons for seeking
16 the residency restriction and the district attorney shall bear the
17 burden, by clear and convincing evidence, of proving the facts support-
18 ing the imposition of a residency restriction. Upon receipt of a peti-
19 tion submitted pursuant to this section, the court shall proceed in a
20 manner consistent with subdivision 4 of section 168-o of the correction
21 law. Applying the guidelines established in subdivision 5-a of section
22 168-1 of the correction law, the court shall determine whether to impose
23 a residency restriction on the offender named in the petition pursuant
24 to section 168-w of the correction law. In the event that the district
25 attorney's petition is granted, the sex offender may appeal as of right
26 from the order, pursuant to the provisions of articles 55, 56 and 57 of
27 the civil practice law and rules. Where counsel has been assigned to
28 represent the offender upon the ground that he or she is financially
29 unable to retain counsel, that assignment shall be continued throughout
30 the pendency of the appeal, and the person may proceed as a poor person,
31 pursuant to article 18-B of the county law.

32 S 21. This act shall take effect immediately, provided that the amend-
33 ments to the opening paragraph of subdivision 4 of section 530.13 of the
34 criminal procedure law made by section sixteen of this act shall be
35 subject to the expiration and reversion of such paragraph pursuant to
36 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
37 date the provisions of section seventeen of this act shall take effect.