

7409--A

2015-2016 Regular Sessions

I N A S S E M B L Y

May 8, 2015

Introduced by M. of A. BRAUNSTEIN -- 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 executive law, the mental hygiene law, the penal law and the social services law, in relation to the residence of a sex offender

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

1 Section 1. Section 168-c of the correction law is amended by adding a
2 new subdivision 2-a to read as follows:
3 2-A. UPON NOTIFICATION PURSUANT TO SUBDIVISIONS ONE OR TWO OF THIS
4 SECTION, IT SHALL BE THE DUTY OF THE DIVISION TO CONFIRM THAT A SEX
5 OFFENDER'S PROPOSED RESIDENCE IS NOT WITHIN THE AREA DEFINED AS SCHOOL
6 GROUNDS, AS SUCH TERM IS DEFINED IN SUBDIVISION FOURTEEN OF SECTION
7 220.00 OF THE PENAL LAW, OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN
8 SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, THE MEASURE-
9 MENTS TO BE TAKEN IN STRAIGHT LINES FROM THE CENTER OF THE NEAREST
10 ENTRANCE OF THE RESIDENCE TO THE NEAREST REAL PROPERTY BOUNDARY LINE
11 COMPRISING SUCH SCHOOL GROUNDS OR PLAYGROUND.
12 S 2. Subdivisions 2 and 3 of section 168-d of the correction law,
13 subdivision 2 as amended by chapter 684 of the laws of 2005, and subdi-
14 vision 3 as amended by chapter 11 of the laws of 2002, are amended to
15 read as follows:
16 2. Any sex offender, who is released on probation or discharged upon
17 payment of a fine, conditional discharge or unconditional discharge
18 shall, prior to such release or discharge, be informed of his or her
19 duty to register under this article by the court in which he or she was
20 convicted. At the time sentence is imposed, such sex offender shall
21 register with the division on a form prepared by the division. The court

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

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1 shall require the sex offender to read and sign such form and to
2 complete the registration portion of such form. The court shall on such
3 form obtain the address where the sex offender expects to reside upon
4 his or her release, and the name and address of any institution of high-
5 er education he or she expects to be employed by, enrolled in, attending
6 or employed, whether for compensation or not, and whether he or she
7 expects to reside in a facility owned or operated by such an institu-
8 tion, and shall report such information to the division. The court shall
9 give one copy of the form to the sex offender and shall send two copies
10 to the division which shall forward the information to the law enforce-
11 ment agencies having jurisdiction. The court shall also notify the
12 district attorney and the sex offender of the date of the determination
13 proceeding to be held pursuant to subdivision three of this section,
14 which shall be held at least forty-five days after such notice is given.
15 This notice shall include the following statement or a substantially
16 similar statement: "This proceeding is being held to determine whether
17 you will be classified as a level 3 offender (risk of repeat offense is
18 high), a level 2 offender (risk of repeat offense is moderate), or a
19 level 1 offender (risk of repeat offense is low), or whether you will be
20 designated as a sexual predator, a sexually violent offender or a predi-
21 cate sex offender, which will determine how long you must register as a
22 sex offender, WHERE YOU MAY RESIDE, WORK OR TRAVEL, and how much infor-
23 mation can be provided to the public concerning your registration. If
24 you fail to appear at this proceeding, without sufficient excuse, it
25 shall be held in your absence. Failure to appear may result in a longer
26 period of registration or a higher level of community notification
27 because you are not present to offer evidence or contest evidence
28 offered by the district attorney." The court shall also advise the sex
29 offender that he or she has a right to a hearing prior to the court's
30 determination, that he or she has the right to be represented by counsel
31 at the hearing and that counsel will be appointed if he or she is finan-
32 cially unable to retain counsel. If the sex offender applies for assign-
33 ment of counsel to represent him or her at the hearing and counsel was
34 not previously assigned to represent the sex offender in the underlying
35 criminal action, the court shall determine whether the offender is
36 financially unable to retain counsel. If such a finding is made, the
37 court shall assign counsel to represent the sex offender pursuant to
38 article eighteen-B of the county law. Where the court orders a sex
39 offender released on probation, such order must include a provision
40 requiring that he or she comply with the requirements of this article.
41 Where such sex offender violates such provision, probation may be imme-
42 diately revoked in the manner provided by article four hundred ten of
43 the criminal procedure law.

44 3. For sex offenders released on probation or discharged upon payment
45 of a fine, conditional discharge or unconditional discharge, it shall be
46 the duty of the court applying the guidelines established in subdivision
47 five of section one hundred sixty-eight-1 of this article to determine
48 the level of notification pursuant to subdivision six of section one
49 hundred sixty-eight-1 of this article and whether such sex offender
50 shall be designated a sexual predator, sexually violent offender, or
51 predicate sex offender as defined in subdivision seven of section one
52 hundred sixty-eight-a of this article. At least fifteen days prior to
53 the determination proceeding, the district attorney shall provide to the
54 court and the sex offender a written statement setting forth the deter-
55 minations sought by the district attorney together with the reasons for
56 seeking such determinations. The court shall allow the sex offender to

1 appear and be heard. The state shall appear by the district attorney, or
2 his or her designee, who shall bear the burden of proving the facts
3 supporting the determinations sought by clear and convincing evidence.
4 Where there is a dispute between the parties concerning the determi-
5 nations, the court shall adjourn the hearing as necessary to permit the
6 sex offender or the district attorney to obtain materials relevant to
7 the determinations from any state or local facility, hospital, institu-
8 tion, office, agency, department or division. Such materials may be
9 obtained by subpoena if not voluntarily provided to the requesting
10 party. In making the determinations, the court shall review any victim's
11 statement and any relevant materials and evidence submitted by the sex
12 offender and the district attorney and the court may consider reliable
13 hearsay evidence submitted by either party provided that it is relevant
14 to the determinations. Facts previously proven at trial or elicited at
15 the time of entry of a plea of guilty shall be deemed established by
16 clear and convincing evidence and shall not be relitigated. The court
17 shall render an order setting forth its determinations and the findings
18 of fact and conclusions of law on which the determinations are based,
19 SUCH ORDER SHALL ALSO INCLUDE ANY CONDITIONS THAT ARE REQUIRED TO BE
20 IMPOSED PURSUANT TO SECTION 65.10 OF THE PENAL LAW. A copy of the order
21 shall be submitted by the court to the division. Upon application of
22 either party, the court shall seal any portion of the court file or
23 record which contains material that is confidential under any state or
24 federal statute. Either party may appeal as of right from the order
25 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
26 seven of the civil practice law and rules. Where counsel has been
27 assigned to represent the sex offender upon the ground that the sex
28 offender is financially unable to retain counsel, that assignment shall
29 be continued throughout the pendency of the appeal, and the person may
30 appeal as a poor person pursuant to article eighteen-B of the county
31 law.

32 S 3. Section 168-f of the correction law is amended by adding a new
33 subdivision 4-a to read as follows:

34 4-A. A SEX OFFENDER WHO HAS ESTABLISHED A RESIDENCE SHALL NOT CHANGE
35 SAID RESIDENCE SO AS TO RESIDE WITHIN THE AREA DEFINED AS SCHOOL
36 GROUNDS, AS SUCH TERM IS DEFINED IN SUBDIVISION FOURTEEN OF SECTION
37 220.00 OF THE PENAL LAW, OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN
38 SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, THE MEASURE-
39 MENTS TO BE TAKEN IN STRAIGHT LINES FROM THE CENTER OF THE NEAREST
40 ENTRANCE OF THE RESIDENCE TO THE REAL PROPERTY BOUNDARY LINE COMPRISING
41 SUCH SCHOOL GROUNDS OR PLAYGROUND.

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

44 2. The division shall advise the board that the sex offender has
45 established residence in this state. The board shall determine whether
46 the sex offender is required to register with the division. If it is
47 determined that the sex offender is required to register, the division
48 shall notify the sex offender of his or her duty to register under this
49 article and shall require the sex offender to sign a form as may be
50 required by the division acknowledging that the duty to register and the
51 procedure for registration has been explained to the sex offender. The
52 division shall obtain on such form the address where the sex offender
53 expects to reside within the state and the sex offender shall retain one
54 copy of the form and send two copies to the division which shall provide
55 the information to the law enforcement agency having jurisdiction where
56 the sex offender expects to reside within this state. No later than

1 thirty days prior to the board making a recommendation, the sex offender
2 shall be notified that his or her case is under review and that he or
3 she is permitted to submit to the board any information relevant to the
4 review. After reviewing any information obtained, and applying the
5 guidelines established in subdivision five of section one hundred
6 sixty-eight-1 of this article, the board shall within sixty calendar
7 days make a recommendation regarding the level of notification pursuant
8 to subdivision six of section one hundred sixty-eight-1 of this article
9 and whether such sex offender shall be designated a sexual predator,
10 sexually violent offender, or predicate sex offender as defined in
11 subdivision seven of section one hundred sixty-eight-a of this article.
12 This recommendation shall be confidential and shall not be available for
13 public inspection. It shall be submitted by the board to the county
14 court or supreme court and to the district attorney in the county of
15 residence of the sex offender and to the sex offender. It shall be the
16 duty of the county court or supreme court in the county of residence of
17 the sex offender, applying the guidelines established in subdivision
18 five of section one hundred sixty-eight-1 of this article, to determine
19 the level of notification pursuant to subdivision six of section one
20 hundred sixty-eight-1 of this article and whether such sex offender
21 shall be designated a sexual predator, sexually violent offender, or
22 predicate sex offender as defined in subdivision seven of section one
23 hundred sixty-eight-a of this article. At least thirty days prior to the
24 determination proceeding, such court shall notify the district attorney
25 and the sex offender, in writing, of the date of the determination
26 proceeding and the court shall also provide the district attorney and
27 sex offender with a copy of the recommendation received from the board
28 and any statement of the reasons for the recommendation received from
29 the board. This notice shall include the following statement or a
30 substantially similar statement: "This proceeding is being held to
31 determine whether you will be classified as a level 3 offender (risk of
32 repeat offense is high), a level 2 offender (risk of repeat offense is
33 moderate), or a level 1 offender (risk of repeat offense is low), or
34 whether you will be designated as a sexual predator, a sexually violent
35 offender or a predicate sex offender, which will determine how long you
36 must register as a sex offender, WHERE YOU MAY RESIDE, WORK OR TRAVEL,
37 and how much information can be provided to the public concerning your
38 registration. If you fail to appear at this proceeding, without suffi-
39 cient excuse, it shall be held in your absence. Failure to appear may
40 result in a longer period of registration or a higher level of community
41 notification because you are not present to offer evidence or contest
42 evidence offered by the district attorney." The court shall also advise
43 the sex offender that he or she has a right to a hearing prior to the
44 court's determination, that he or she has the right to be represented by
45 counsel at the hearing and that counsel will be appointed if he or she
46 is financially unable to retain counsel. A returnable form shall be
47 enclosed in the court's notice to the sex offender on which the sex
48 offender may apply for assignment of counsel. If the sex offender
49 applies for assignment of counsel and the court finds that the offender
50 is financially unable to retain counsel, the court shall assign counsel
51 to represent the sex offender pursuant to article eighteen-B of the
52 county law. If the district attorney seeks a determination that differs
53 from the recommendation submitted by the board, at least ten days prior
54 to the determination proceeding the district attorney shall provide to
55 the court and the sex offender a statement setting forth the determi-
56 nations sought by the district attorney together with the reasons for

1 seeking such determinations. The court shall allow the sex offender to
2 appear and be heard. The state shall appear by the district attorney, or
3 his or her designee, who shall bear the burden of proving the facts
4 supporting the determinations sought by clear and convincing evidence.
5 It shall be the duty of the court applying the guidelines established in
6 subdivision five of section one hundred sixty-eight-1 of this article to
7 determine the level of notification pursuant to subdivision six of
8 section one hundred sixty-eight-1 of this article and whether such sex
9 offender shall be designated a sexual predator, sexually violent offen-
10 der, or predicate sex offender as defined in subdivision seven of
11 section one hundred sixty-eight-a of this article. Where there is a
12 dispute between the parties concerning the determinations, the court
13 shall adjourn the hearing as necessary to permit the sex offender or the
14 district attorney to obtain materials relevant to the determinations
15 from the state board of examiners of sex offenders or any state or local
16 facility, hospital, institution, office, agency, department or division.
17 Such materials may be obtained by subpoena if not voluntarily provided
18 to the requesting party. In making the determinations the court shall
19 review any victim's statement and any relevant materials and evidence
20 submitted by the sex offender and the district attorney and the recom-
21 mendation and any material submitted by the board, and may consider
22 reliable hearsay evidence submitted by either party, provided that it is
23 relevant to the determinations. If available, facts proven at trial or
24 elicited at the time of a plea of guilty shall be deemed established by
25 clear and convincing evidence and shall not be relitigated. The court
26 shall render an order setting forth its determinations and the findings
27 of fact and conclusions of law on which the determinations are based,
28 SUCH ORDER SHALL ALSO INCLUDE ANY CONDITIONS THAT ARE REQUIRED TO BE
29 IMPOSED PURSUANT TO SECTION 65.10 OF THE PENAL LAW. A copy of the order
30 shall be submitted by the court to the division. Upon application of
31 either party, the court shall seal any portion of the court file or
32 record which contains material that is confidential under any state or
33 federal statute. Either party may appeal as of right from the order
34 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
35 seven of the civil practice law and rules. Where counsel has been
36 assigned to represent the sex offender upon the ground that the sex
37 offender is financially unable to retain counsel, that assignment shall
38 be continued throughout the pendency of the appeal, and the person may
39 appeal as a poor person pursuant to article eighteen-B of the county
40 law.

41 S 5. Subdivision 3 of section 168-n of the correction law, as amended
42 by chapter 684 of the laws of 2005, is amended to read as follows:

43 3. No later than thirty days prior to the board's recommendation, the
44 sex offender shall be notified that his or her case is under review and
45 that he or she is permitted to submit to the board any information rele-
46 vant to the review. Upon receipt of the board's recommendation, the
47 sentencing court shall determine whether the sex offender was previously
48 found to be eligible for assigned counsel in the underlying case. Where
49 such a finding was previously made, the court shall assign counsel to
50 represent the offender, pursuant to article eighteen-B of the county
51 law. At least twenty days prior to the determination proceeding, the
52 sentencing court shall notify the district attorney, the sex offender
53 and the sex offender's counsel, in writing, of the date of the determi-
54 nation proceeding and shall also provide the district attorney, the sex
55 offender and the sex offender's counsel with a copy of the recommenda-
56 tion received from the board and any statement of the reasons for the

1 recommendation received from the board. This notice shall include the
2 following statement or a substantially similar statement: "This
3 proceeding is being held to determine whether you will be classified as
4 a level 3 offender (risk of repeat offense is high), a level 2 offender
5 (risk of repeat offense is moderate), or a level 1 offender (risk of
6 repeat offense is low), or whether you will be designated as a sexual
7 predator, a sexually violent offender or a predicate sex offender, which
8 will determine how long you must register as a sex offender, WHERE YOU
9 MAY RESIDE, WORK OR TRAVEL, and how much information can be provided to
10 the public concerning your registration. If you fail to appear at this
11 proceeding, without sufficient excuse, it shall be held in your absence.
12 Failure to appear may result in a longer period of registration or a
13 higher level of community notification because you are not present to
14 offer evidence or contest evidence offered by the district attorney."
15 The written notice to the sex offender shall also advise the offender
16 that he or she has a right to a hearing prior to the court's determi-
17 nation, and that he or she has the right to be represented by counsel at
18 the hearing. If counsel has been assigned to represent the offender at
19 the determination proceeding, the notice shall also provide the name,
20 address and telephone number of the assigned counsel. Where counsel has
21 not been assigned, the notice shall advise the sex offender that counsel
22 will be appointed if he or she is financially unable to retain counsel,
23 and a returnable form shall be enclosed in the court's notice to the sex
24 offender on which the sex offender may apply for assignment of counsel.
25 If the sex offender applies for assignment of counsel and the court
26 finds that the offender is financially unable to retain counsel, the
27 court shall assign counsel to represent the sex offender pursuant to
28 article eighteen-B of the county law. If the district attorney seeks a
29 determination that differs from the recommendation submitted by the
30 board, at least ten days prior to the determination proceeding the
31 district attorney shall provide to the court and the sex offender a
32 statement setting forth the determinations sought by the district attor-
33 ney together with the reasons for seeking such determinations. The court
34 shall allow the sex offender to appear and be heard. The state shall
35 appear by the district attorney, or his or her designee, who shall bear
36 the burden of proving the facts supporting the determinations sought by
37 clear and convincing evidence. Where there is a dispute between the
38 parties concerning the determinations, the court shall adjourn the hear-
39 ing as necessary to permit the sex offender or the district attorney to
40 obtain materials relevant to the determinations from the state board of
41 examiners of sex offenders or any state or local facility, hospital,
42 institution, office, agency, department or division. Such materials may
43 be obtained by subpoena if not voluntarily provided to the requesting
44 party. In making the determinations the court shall review any victim's
45 statement and any relevant materials and evidence submitted by the sex
46 offender and the district attorney and the recommendation and any mate-
47 rials submitted by the board, and may consider reliable hearsay evidence
48 submitted by either party, provided that it is relevant to the determi-
49 nations. Facts previously proven at trial or elicited at the time of
50 entry of a plea of guilty shall be deemed established by clear and
51 convincing evidence and shall not be relitigated. The court shall render
52 an order setting forth its determinations and the findings of fact and
53 conclusions of law on which the determinations are based, SUCH ORDER
54 SHALL ALSO INCLUDE ANY CONDITIONS THAT ARE REQUIRED TO BE IMPOSED PURSU-
55 ANT TO SECTION 65.10 OF THE PENAL LAW. A copy of the order shall be
56 submitted by the court to the division. Upon application of either

1 party, the court shall seal any portion of the court file or record
2 which contains material that is confidential under any state or federal
3 statute. Either party may appeal as of right from the order pursuant to
4 the provisions of articles fifty-five, fifty-six and fifty-seven of the
5 civil practice law and rules. Where counsel has been assigned to repre-
6 sent the sex offender upon the ground that the sex offender is finan-
7 cially unable to retain counsel, that assignment shall be continued
8 throughout the pendency of the appeal, and the person may appeal as a
9 poor person pursuant to article eighteen-B of the county law.

10 S 6. Subdivision 1 of section 203 of the correction law, as added by
11 section 32 of subpart A of part C of chapter 62 of the laws of 2011, is
12 amended to read as follows:

13 1. The commissioner shall promulgate rules and regulations that shall
14 include guidelines and procedures on the placement of sex offenders
15 designated as level two or level three offenders pursuant to article
16 six-C of this chapter, PROVIDED THAT SUCH GUIDELINES AND PROCEDURES
17 SHALL PROHIBIT THE PLACEMENT OF SUCH SEX OFFENDERS WITHIN THE AREA
18 DEFINED AS SCHOOL GROUNDS, AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR-
19 TEEN OF SECTION 220.00 OF THE PENAL LAW, OR A PLAYGROUND, AS SUCH TERM
20 IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW.
21 Such regulations shall provide instruction on certain factors to be
22 considered when investigating and approving the residence of level two
23 or level three sex offenders released on presumptive release, parole,
24 conditional release or post-release supervision. Such factors shall
25 include the following:

26 (a) the location of other sex offenders required to register under the
27 sex offender registration act, specifically whether there is a concen-
28 tration of registered sex offenders in a certain residential area or
29 municipality;

30 (b) the number of registered sex offenders residing at a particular
31 property;

32 (c) the proximity of entities with vulnerable populations;

33 (d) accessibility to family members, friends or other supportive
34 services, including, but not limited to, locally available sex offender
35 treatment programs with preference for placement of such individuals
36 into programs that have demonstrated effectiveness in reducing sex
37 offender recidivism and increasing public safety; and

38 (e) the availability of permanent, stable housing in order to reduce
39 the likelihood that such offenders will be transient.

40 S 7. The correction law is amended by adding a new section 209 to read
41 as follows:

42 S 209. REGULATIONS FOR RELEASE OF SEX OFFENDERS DESIGNATED AS LEVEL
43 ONE OFFENDERS. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS
44 THAT SHALL INCLUDE GUIDELINES AND PROCEDURES ON THE PLACEMENT OF SEX
45 OFFENDERS DESIGNATED AS LEVEL ONE SEXUAL PREDATORS, SEXUALLY VIOLENT
46 OFFENDERS, OR PREDICATE SEX OFFENDERS PURSUANT TO ARTICLE SIX-C OF THIS
47 CHAPTER AND THE VICTIM OF THE OFFENSE FOR WHICH SUCH DESIGNATION WAS
48 RECEIVED WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE,
49 PROVIDED THAT SUCH GUIDELINES AND PROCEDURES SHALL PROHIBIT THE PLACE-
50 MENT OF SUCH SEX OFFENDERS WITHIN ANY SCHOOL GROUNDS, AS SUCH TERM IS
51 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A
52 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
53 10.00 OF THE PENAL LAW.

54 S 8. Subdivision 14 of section 259-c of the executive law, as amended
55 by section 38-b of subpart A of part C of chapter 62 of the laws of
56 2011, is amended to read as follows:

1 14. notwithstanding any other provision of law to the contrary, where
2 a person serving a sentence for an offense defined in article one
3 hundred thirty, one hundred thirty-five or two hundred sixty-three of
4 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
5 the victim of such offense was under the age of eighteen at the time of
6 such offense or such person has been designated a level TWO OR LEVEL
7 three sex offender pursuant to subdivision six of section one hundred
8 sixty-eight-1 of the correction law, is released on parole or condi-
9 tionally released pursuant to subdivision one or two of this section,
10 the board shall require, as a mandatory condition of such release, that
11 such sentenced offender shall refrain from knowingly entering into or
12 upon any school grounds, as that term is defined in subdivision fourteen
13 of section 220.00 of the penal law, [or] any other facility or institu-
14 tion primarily used for the care or treatment of persons under the age
15 of eighteen while one or more of such persons under the age of eighteen
16 are present, OR ANY PLAYGROUND, AS THAT TERM IS DEFINED IN SUBDIVISION
17 TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, provided however, that
18 when such sentenced offender is a registered student or participant or
19 an employee of such facility or institution or entity contracting there-
20 with or has a family member enrolled in such facility or institution,
21 such sentenced offender may, with the written authorization of his or
22 her parole officer and the superintendent or chief administrator of such
23 facility, institution or grounds, enter such facility, institution or
24 upon such grounds for the limited purposes authorized by the parole
25 officer and superintendent or chief officer. Nothing in this subdivi-
26 sion shall be construed as restricting any lawful condition of super-
27 vision that may be imposed on such sentenced offender.

28 S 9. Subdivision 4 of section 243 of the executive law, as added by
29 chapter 568 of the laws of 2008 and the opening paragraph as amended by
30 section 17 of part A of chapter 56 of the laws of 2010, is amended to
31 read as follows:

32 4. The office shall recommend to the commissioner rules and regu-
33 lations which shall include guidelines and procedures on the placement
34 of sex offenders designated as level two or level three offenders pursu-
35 ant to article six-C of the correction law, PROVIDED THAT SUCH RECOM-
36 MENDED RULES AND REGULATIONS SHALL PROHIBIT THE PLACEMENT OF SUCH SEX
37 OFFENDERS WITHIN THE AREA DEFINED AS SCHOOL GROUNDS, AS SUCH TERM IS
38 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A
39 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
40 10.00 OF THE PENAL LAW. Such regulations shall instruct local probation
41 departments to consider certain factors when investigating and approving
42 the residence of level two or level three sex offenders sentenced to a
43 period of probation. Such factors shall include the following:

44 (a) the location of other sex offenders required to register under the
45 sex offender registration act, specifically whether there is a concen-
46 tration of registered sex offenders in a certain residential area or
47 municipality;

48 (b) the number of registered sex offenders residing at a particular
49 property;

50 (c) the proximity of entities with vulnerable populations;

51 (d) accessibility to family members, friends or other supportive
52 services, including but not limited to locally available sex offender
53 treatment programs with preference for placement of such individuals
54 into programs that have demonstrated effectiveness in reducing sex
55 offender recidivism and increasing public safety; and

1 (e) the availability of permanent, stable housing in order to reduce
2 the likelihood that such offenders will be transient.

3 S 10. Subdivision (a) of section 10.11 of the mental hygiene law, as
4 added by chapter 7 of the laws of 2007, paragraphs 1 and 2 as amended by
5 section 118-e of subpart B of part C of chapter 62 of the laws of 2011,
6 is amended to read as follows:

7 (a) (1) Before ordering the release of a person to a regimen of strict
8 and intensive supervision and treatment pursuant to this article, the
9 court shall order that the department of corrections and community
10 supervision recommend supervision requirements to the court. These
11 supervision requirements, which shall be developed in consultation with
12 the commissioner, SHALL INCLUDE A PROHIBITION AGAINST KNOWINGLY ENTERING
13 INTO OR UPON ANY SCHOOL GROUNDS, AS THAT TERM IS DEFINED IN SUBDIVISION
14 FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, ANY OTHER FACILITY OR
15 INSTITUTION PRIMARILY USED FOR THE CARE OR TREATMENT OF PERSONS UNDER
16 THE AGE OF EIGHTEEN WHILE ONE OR MORE OF SUCH PERSONS UNDER THE AGE OF
17 EIGHTEEN ARE PRESENT, OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDI-
18 VISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, AND may include but
19 need not be limited to, electronic monitoring or global positioning
20 satellite tracking for an appropriate period of time, polygraph monitor-
21 ing, specification of residence or type or residence, prohibition of
22 contact with identified past or potential victims, strict and intensive
23 supervision by a parole officer, and any other lawful and necessary
24 conditions that may be imposed by a court. In addition, after consulta-
25 tion with the psychiatrist, psychologist or other professional primarily
26 treating the respondent, the commissioner shall recommend a specific
27 course of treatment. A copy of the recommended requirements for super-
28 vision and treatment shall be given to the attorney general and the
29 respondent and his or her counsel a reasonable time before the court
30 issues its written order pursuant to this section.

31 (2) Before issuing its written order, the court shall afford the
32 parties an opportunity to be heard, and shall consider any additional
33 submissions by the respondent and the attorney general concerning the
34 proposed conditions of the regimen of strict and intensive supervision
35 and treatment. The court shall issue an order specifying the conditions
36 of the regimen of strict and intensive supervision and treatment, which
37 shall include A CONDITION THAT THE RESPONDENT SHALL REFRAIN FROM KNOW-
38 INGLY ENTERING INTO OR UPON ANY SCHOOL GROUNDS, AS THAT TERM IS DEFINED
39 IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, ANY OTHER
40 FACILITY OR INSTITUTION PRIMARILY USED FOR THE CARE OR TREATMENT OF
41 PERSONS UNDER THE AGE OF EIGHTEEN WHILE ONE OR MORE OF SUCH PERSONS
42 UNDER THE AGE OF EIGHTEEN ARE PRESENT, OR A PLAYGROUND, AS SUCH TERM IS
43 DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW,
44 specified supervision requirements and compliance with a specified
45 course of treatment. A written statement of the conditions of the regi-
46 men of strict and intensive supervision and treatment shall be given to
47 the respondent and to his or her counsel, any designated service provid-
48 ers or treating professionals, the commissioner, the attorney general
49 and the supervising parole officer. The court shall require the depart-
50 ment of corrections and community supervision to take appropriate
51 actions to implement the supervision plan and assure compliance with the
52 conditions of the regimen of strict and intensive supervision and treat-
53 ment AND TO INVESTIGATE AND APPROVE THE LOCATION OF THE RESPONDENT'S
54 RESIDENCE. A regimen of strict and intensive supervision does not toll
55 the running of any form of supervision in criminal cases, including but
56 not limited to post-release supervision and parole.

1 S 11. Section 10.00 of the penal law is amended by adding a new subdi-
2 vision 22 to read as follows:

3 22. "PLAYGROUND" MEANS (A) IN OR WITHIN ANY BUILDING, STRUCTURE, PLAY-
4 ING FIELD, OR LAND CONTAINED WITHIN THE BOUNDARY OF LAND OWNED, LEASED
5 OR MAINTAINED BY THE STATE OR ANY AGENCY OR MUNICIPALITY THEREOF OR BY
6 ANY NOT-FOR-PROFIT CORPORATION, CORPORATION OR ASSOCIATION THAT IS USED
7 ON A REGULAR BASIS AS A RECREATION AREA FOR CHILDREN AND IS SO DESIG-
8 NATED, OR (B) ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOU-
9 SAND FEET OF THE PERIMETER OF ANY SUCH PLAYGROUND OR ANY PARKED AUTOMO-
10 BILE OR OTHER PARKED VEHICLE LOCATED WITHIN ONE THOUSAND FEET OF THE
11 REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH PLAYGROUND. FOR THE
12 PURPOSES OF THIS SECTION AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN
13 SIDEWALKS, STREETS, PARKING LOTS, PARKS, STORES AND RESTAURANTS.

14 S 12. Paragraph (a) of subdivision 4-a of section 65.10 of the penal
15 law, as amended by chapter 67 of the laws of 2008, is amended to read as
16 follows:

17 (a) When imposing a sentence of probation or conditional discharge
18 upon a person convicted of an offense defined in article one hundred
19 thirty, two hundred thirty-five or two hundred sixty-three of this chap-
20 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim
21 of such offense was under the age of eighteen at the time of such
22 offense or such person has been designated a level TWO OR LEVEL three
23 sex offender pursuant to subdivision six of section [168-1] ONE HUNDRED
24 SIXTY-EIGHT-L of the correction law, the court shall require, as a
25 mandatory condition of such sentence, that such sentenced offender shall
26 refrain from knowingly entering into or upon any school grounds, as that
27 term is defined in subdivision fourteen of section 220.00 of this chap-
28 ter, [or] any other facility or institution primarily used for the care
29 or treatment of persons under the age of eighteen while one or more of
30 such persons under the age of eighteen are present, OR ANY PLAYGROUND,
31 AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF
32 THIS CHAPTER, provided however, that when such sentenced offender is a
33 registered student or participant or an employee of such facility or
34 institution or entity contracting therewith or has a family member
35 enrolled in such facility or institution, such sentenced offender may,
36 with the written authorization of his or her probation officer or the
37 court and the superintendent or chief administrator of such facility,
38 institution or grounds, enter such facility, institution or upon such
39 grounds for the limited purposes authorized by the probation officer or
40 the court and superintendent or chief officer. Nothing in this subdivi-
41 sion shall be construed as restricting any lawful condition of super-
42 vision that may be imposed on such sentenced offender.

43 S 13. Subdivision 8 of section 20 of the social services law, as
44 amended by section 150 of subpart B of part C of chapter 62 of the laws
45 of 2011, is amended to read as follows:

46 8. (a) The office of temporary and disability assistance shall promul-
47 gate rules and regulations for the administration of this subdivision.
48 The rules and regulations shall provide for the conditions under which
49 local social services officials determine the placement of applicants
50 for and recipients of public assistance for whom a notice pursuant to
51 section two hundred three of the correction law[,] has been received and
52 who are:

53 (i) determined to be in immediate need of shelter; and

54 (ii) designated a level two or level three sex offender pursuant to
55 article six-C of the correction law.

1 (b) When making determinations in regard to the placement of such
2 individuals in shelter, local social services officials shall NOT PLACE
3 SUCH INDIVIDUALS WITHIN THE AREA DEFINED AS SCHOOL GROUNDS, AS SUCH TERM
4 IS DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW,
5 OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF
6 SECTION 10.00 OF THE PENAL LAW, AND SHALL consider the following
7 factors:

8 (i) the location of other sex offenders required to register pursuant
9 to the sex offender registration act, specifically whether there is a
10 concentration of registered sex offenders in a certain residential area
11 or municipality;

12 (ii) the number of registered sex offenders residing at a particular
13 property;

14 (iii) proximity of the entities with vulnerable populations;

15 (iv) accessibility to family members, friends or other supportive
16 services, including but not limited to locally available sex offender
17 treatment programs with preference for placement of such individuals
18 into programs that have demonstrated effectiveness in reducing sex
19 offender recidivism and increasing public safety; and

20 (v) investigation and approval of such placement by the department of
21 corrections and community supervision.

22 S 14. This act shall take effect on the first of November next
23 succeeding the date on which it shall have become a law.