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

7878

2015-2016 Regular Sessions

I N A S S E M B L Y

May 28, 2015

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

AN ACT to amend the correction law and the mental hygiene law, in relation to sex offender residency restrictions; and to repeal certain provisions of the penal law and the executive law relating thereto

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

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

(F) WHETHER THE SEX OFFENDER IS SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE.

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

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

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

2. Any sex offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such sex offender shall register with the division on a form prepared by the division. The court shall require the sex offender to read and sign such form and to complete the registration portion of such form. The court shall on such

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

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form obtain the address where the sex offender expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The court shall give one copy of the form to the sex offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the sex offender of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the court shall determine whether the offender is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. Where the court orders a sex offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such sex offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

S 4. Subdivision 3 of section 168-d of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

3. For sex offenders released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. IF THE SEX OFFENDER HAS A VICTIM UNDER EIGHTEEN YEARS OF AGE, THE COURT MAY ORDER AN EVALUATION BY THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW FOR THE PURPOSE OF OBTAINING A RECOMMENDATION AS

TO WHETHER OR NOT THE SEX OFFENDER SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE. TO THE EXTENT POSSIBLE, THE COURT SHALL PROVIDE THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH WITH SUPPORTING DOCUMENTATION AND OTHER RELEVANT INFORMATION. IF THE CASE REVIEW TEAM PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW RECOMMENDS THAT A RESIDENCY RESTRICTION SHOULD BE IMPOSED THEN THE COURT SHALL CONDUCT A HEARING PURSUANT TO SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE TO DETERMINE WHETHER SUCH A RESTRICTION IS NECESSARY AND, WHEN NECESSARY, ORDER SUCH A RESTRICTION. At least fifteen days prior to the determination proceeding, the district attorney shall provide to the court and the sex offender a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations, the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

S 5. Subdivision 2 of section 168-k of the correction law, as amended by chapter 684 of the laws of 2005, is amended to read as follows:

2. The division shall advise the board that the sex offender has established residence in this state. The board shall determine whether the sex offender is required to register with the division. If it is determined that the sex offender is required to register, the division shall notify the sex offender of his or her duty to register under this article and shall require the sex offender to sign a form as may be required by the division acknowledging that the duty to register and the procedure for registration has been explained to the sex offender. The division shall obtain on such form the address where the sex offender expects to reside within the state and the sex offender shall retain one copy of the form and send two copies to the division which shall provide

the information to the law enforcement agency having jurisdiction where the sex offender expects to reside within this state. No later than thirty days prior to the board making a recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. IF THE SEX OFFENDER HAS A VICTIM UNDER EIGHTEEN YEARS OF AGE, THE COURT MAY ORDER AN EVALUATION BY THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW FOR THE PURPOSE OF OBTAINING A RECOMMENDATION AS TO WHETHER OR NOT THE SEX OFFENDER SHOULD BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE. TO THE EXTENT POSSIBLE, THE COURT SHALL PROVIDE THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH WITH SUPPORTING DOCUMENTATION AND OTHER RELEVANT INFORMATION. IF THE CASE REVIEW TEAM PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW RECOMMENDS THAT A RESIDENCY RESTRICTION SHOULD BE IMPOSED THEN THE COURT SHALL CONDUCT A HEARING PURSUANT TO SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE TO DETERMINE WHETHER SUCH A RESTRICTION IS NECESSARY AND, WHEN NECESSARY, ORDER SUCH A RESTRICTION. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCE. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a

higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. It shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article [and], whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article AND WHETHER SUCH SEX OFFENDER WILL BE SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any material submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. If available, facts proven at trial or elicited at the time of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

S 6. Subdivision 7 of section 168-l of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

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

S 7. Subdivisions 2 and 3 of section 168-n of the correction law, subdivision 2 as amended by of chapter 453 of the laws of 1999 and subdivision 3 as amended by chapter 684 of the laws of 2005, are amended and a new subdivision 2-a is added to read as follows:

2. In addition, applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, the sentencing court shall also make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article. [Both] WHEN THE COURT RECEIVES A RECOMMENDATION THAT A RESIDENCY RESTRICTION BE CONSIDERED PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW THE COURT SHALL CONDUCT A HEARING TO DETERMINE IF THE SEX OFFENDER SHALL BE SUBJECT TO A RESIDENCY RESTRICTION PROHIBITING SUCH OFFENDER FROM KNOWINGLY ESTABLISHING A PERMANENT RESIDENCE WITHIN UP TO ONE THOUSAND FEET OF ANY SCHOOL GROUNDS AS THAT TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW OR THE GROUNDS OF A CHILD DAY CARE CENTER AS DEFINED IN SUBDIVISION FIVE OF SECTION 220.44 OF THE PENAL LAW FOR A PERIOD OF UP TO TEN YEARS. IN DETERMINING THAT A RESIDENCY RESTRICTION IS NECESSARY THE COURT SHALL CONSIDER THE FOLLOWING:

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

(B) WHETHER A RESIDENCY RESTRICTION IS NECESSARY, BASED ON THE OFFENDER'S CURRENT BEHAVIOR AND PRESENT AND PROSPECTIVE LIVING ARRANGEMENTS, TO PROTECT PUBLIC SAFETY;

(C) THE PRESENCE OF FAMILY MEMBERS AT THE RESIDENCE WHERE THE OFFENDER MAY PROPOSE TO ESTABLISH PERMANENT RESIDENCY, AS WELL AS TIES TO THAT COMMUNITY THAT MAY BE BENEFICIAL TO REHABILITATION;

(D) THE ABILITY OF THE OFFENDER TO OBTAIN PERMANENT, AFFORDABLE AND STABLE HOUSING IN ORDER TO REDUCE THE LIKELIHOOD THAT THE OFFENDER WILL BE TRANSIENT;

(E) THE ACCESSIBILITY TO SUPPORTIVE AND SUPERVISORY SERVICES, AS APPLICABLE, INCLUDING BUT NOT LIMITED TO LOCALLY AVAILABLE SEX OFFENDER TREATMENT PROGRAMS THAT HAVE DEMONSTRATED EFFECTIVENESS IN REDUCING SEX OFFENDER RECIDIVISM AND INCREASING PUBLIC SAFETY;

(F) THE ABILITY OF THE OFFENDER TO FIND GAINFUL AND STABLE EMPLOYMENT;

(G) ANY RECOMMENDATION OF THE OFFENDER'S COMMUNITY SUPERVISION OFFICER, PROBATION OFFICER OR MENTAL HEALTH CARE PROVIDER;

(H) THE REPORT OF THE CASE REVIEW TEAM PURSUANT TO SECTION 10.05 OF THE MENTAL HYGIENE LAW; AND

(I) ANY OTHER RELEVANT FACTOR AND RELATED INFORMATION.

THE determinations of the sentencing court shall be made thirty calendar days prior to discharge, parole or release.

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

DAY CARE CENTER AS DEFINED IN SUBDIVISION FIVE OF SECTION 220.44 OF THE PENAL LAW. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM PERMANENT RESIDENCE SHALL MEAN THE PLACE WHERE THE OFFENDER MAINTAINS A FIXED, PERMANENT HOME AND TO WHICH HE OR SHE, WHENEVER TEMPORARILY AWAY, INTENDS TO RETURN. THE SEX OFFENDER MAY HAVE MORE THAN ONE PERMANENT RESIDENCE FOR THE PURPOSES OF THIS SUBDIVISION. PERMANENT RESIDENCE SHALL NOT INCLUDE TEMPORARY OR TRANSITIONAL HOUSING.

(B) THE COURT SHALL DETERMINE THE DURATION OF THE RESIDENCY RESTRICTION IMPOSED PURSUANT TO THIS SECTION PROVIDED, HOWEVER, THAT SUCH RESTRICTION SHALL NOT APPLY FOR MORE THAN TEN YEARS AFTER THE LATER OF THE OFFENDER'S RELEASE FROM JAIL OR PRISON FOR A SEX OFFENSE OR THE PERIOD OR TERM OF PROBATION, PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION FOR THE OFFENSE WHICH REQUIRES THE OFFENDER TO REGISTER AS A SEX OFFENDER PURSUANT TO THIS ARTICLE. IN CALCULATING THE DURATION OF THE RESIDENCY RESTRICTION, ANY PERIOD OF TIME DURING WHICH THE OFFENDER IS INCARCERATED FOR ANY REASON AFTER SUCH RESIDENCY RESTRICTION IS ORDERED SHALL BE EXCLUDED AND THE DURATION OF THE RESTRICTION SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME OF SUCH INCARCERATION.

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

3. No later than thirty days prior to the board's recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. Upon receipt of the board's recommendation, the sentencing court shall determine whether the sex offender was previously found to be eligible for assigned counsel in the underlying case. Where such a finding was previously made, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. At least twenty days prior to the determination proceeding, the sentencing court shall notify the district attorney, the sex offender and the sex offender's counsel, in writing, of the date of the determination proceeding and shall also provide the district attorney, the sex offender and the sex offender's counsel with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. THE COURT MAY ALSO DETERMINE WHETHER YOU WILL BE SUBJECT TO A RESIDENCY RESTRICTION WHICH MAY RESTRICT WHERE YOU CAN ESTABLISH YOUR PERMANENT RESIDENCY. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The written notice to the sex offender shall also advise the offender that he or she has a right to a hearing prior to the court's determination, and that he or she has the right to be represented by counsel at the hearing. If counsel has been assigned to represent the offender at the determination proceeding,

the notice shall also provide the name, address and telephone number of the assigned counsel. Where counsel has not been assigned, the notice shall advise the sex offender that counsel will be appointed if he or she is financially unable to retain counsel, and a returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any materials submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

S 8. The section heading of section 168-o of the correction law, as amended by chapter 453 of the laws of 1999, is amended and a new subdivision 2-a is added to read as follows:

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

2-A. ANY SEX OFFENDER SUBJECT TO A RESIDENCY RESTRICTION PURSUANT TO THIS ARTICLE MAY PETITION THE SENTENCING COURT OR WITH THE COURT WHICH IMPOSED SUCH RESTRICTION FOR AN ORDER TERMINATING OR MODIFYING SUCH RESIDENCY RESTRICTION. THE PETITION SHALL SET FORTH THE REASONS FOR SEEKING SUCH MODIFICATION OR TERMINATION. THE SEX OFFENDER SHALL BEAR THE BURDEN OF PROVING THE FACTS SUPPORTING THE REQUESTED MODIFICATION OR

TERMINATION BY CLEAR AND CONVINCING EVIDENCE. SUCH A PETITION SHALL BE SERVED ON THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH SUCH COURT IS LOCATED AND MAY NOT BE FILED MORE THAN ANNUALLY. THE DISTRICT ATTORNEY AND THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM AN ORDER ISSUED UNDER THIS SUBDIVISION PURSUANT TO PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRESENT THE SEX OFFENDER UPON THE GROUND THAT THE SEX OFFENDER IS FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED THROUGHOUT THE PENDENCY OF ANY APPEAL, IN ACCORDANCE WITH ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

S 9. Section 168-o of the correction law is amended by adding a new subdivision 3-a to read as follows:

3-A. PRIOR TO THE EXPIRATION OF A RESIDENCY RESTRICTION ORDERED PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE, THE DISTRICT ATTORNEY MAY FILE A PETITION WITH THE SENTENCING COURT OR WITH THE COURT WHICH ORDERED THE RESIDENCY RESTRICTION TO EXTEND THE DURATION OF SUCH RESIDENCY RESTRICTION FOR UP TO FIVE ADDITIONAL YEARS. THE DISTRICT ATTORNEY SHALL BEAR THE BURDEN OF PROVING NEW FACTS AND CIRCUMSTANCES THAT WARRANT THE REQUESTED EXTENSION BY CLEAR AND CONVINCING EVIDENCE. IN THE EVENT THAT THE DISTRICT ATTORNEY'S PETITION IS GRANTED, THE SEX OFFENDER MAY APPEAL AS OF RIGHT FROM THE ORDER PURSUANT TO THE PROVISIONS OF ARTICLES FIFTY-FIVE, FIFTY-SIX AND FIFTY-SEVEN OF THE CIVIL PRACTICE LAW AND RULES. WHERE COUNSEL HAS BEEN ASSIGNED TO REPRESENT THE OFFENDER UPON THE GROUND THAT HE OR SHE IS FINANCIALLY UNABLE TO RETAIN COUNSEL, THAT ASSIGNMENT SHALL BE CONTINUED THROUGHOUT THE PENDENCY OF ANY APPEAL, IN ACCORDANCE WITH ARTICLE EIGHTEEN-B OF THE COUNTY LAW.

S 10. Subdivision 4 of section 168-o of the correction law, as added by chapter 453 of the laws of 1999, is amended to read as follows:

4. Upon receipt of a petition submitted pursuant to subdivision one, two, TWO-A, [or] three, OR THREE-A of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the sex offender and shall provide a copy of the petition to the other party. The court shall also advise the sex offender that he or she has the right to be represented by counsel at the hearing and counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated recommendation the board shall notify the sex offender and his or her counsel that the offender's case is under review and he or she is permitted to submit to the board any information relevant to the review. The board's updated recommendation on the sex offender shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a sex offender, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the sex offender, the sex offender's counsel and the district attorney and notify them, in writing, of the date set by the court for a hearing on the petition. After reviewing the recommendation received from the board and any relevant materials and evidence submitted by the sex offender and the district attorney, the court may grant or deny the petition. The

court may also consult with the victim prior to making a determination on the petition. The court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. If the petition is granted, it shall be the obligation of the court to submit a copy of its order to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute.

S 11. The opening paragraph of section 168-t of the correction law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. ANY SEX OFFENDER WHO KNOWINGLY VIOLATES A RESIDENCY RESTRICTION IMPOSED UPON HIM OR HER BY THE COURT PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THIS ARTICLE SHALL, UPON CONVICTION, BE GUILTY OF A CLASS A MISDEMEANOR.

S 12. Subdivisions (e), (f) and (g) of section 10.05 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(e) If the person is referred to a case review team for evaluation, notice of such referral shall be provided to the respondent. Upon such referral, the case review team shall review relevant records, including those described in subdivisions (c) and (d) of this section, and may arrange for a psychiatric examination of the respondent. Based on the review and assessment of such information, the case review team shall consider whether the respondent is a sex offender requiring civil management OR, AS APPLICABLE, WHETHER A RESPONDENT OR AN INDIVIDUAL REFERRED BY A COURT PURSUANT TO SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-D OR SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-K OF THE CORRECTION LAW SHOULD BE CONSIDERED FOR A RESIDENCY RESTRICTION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-N OF THE CORRECTION LAW.

(f) If the case review team determines that the respondent is not a sex offender requiring civil management, it shall so notify the respondent and the attorney general, and the attorney general shall not file a sex offender civil management petition. IF THE CASE REVIEW TEAM FINDS THAT AN INDIVIDUAL REFERRED BY A COURT PURSUANT TO SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-D OR SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-K OF THE CORRECTION LAW SHOULD NOT BE CONSIDERED FOR A RESIDENCY RESTRICTION, IT SHALL SO NOTIFY THE COURT, THE INDIVIDUAL AND THE DISTRICT ATTORNEY.

(g) I. If the case review team finds that the respondent is a sex offender requiring civil management, it shall so notify the respondent and the attorney general, in writing. The written notice must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a mental abnormality. Where the notice indicates that a respondent stands convicted of or was charged with a designated felony, it shall also include the case review team's finding as to whether the act was sexually motivated. The case review team shall provide its written notice to the attorney general and the respondent within forty-five days of the commissioner receiving the notice of anticipated release. However, failure to do so within that time period shall not affect the validity of such notice or finding or any subsequent action, including the attorney general's filing of a sex offender civil management petition subsequent to receiving the finding of the case review team.

II. IF THE CASE MANAGEMENT REVIEW TEAM FINDS THAT THE RESPONDENT OR OTHER INDIVIDUAL REFERRED BY THE COURT PURSUANT TO SUBDIVISION THREE OF

SECTION ONE HUNDRED SIXTY-EIGHT-D OF THE CORRECTION LAW OR SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT-K OF THE CORRECTION LAW IS A SEX OFFENDER, THAT THE VICTIM OF SUCH OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE, AND THAT THE SEX OFFENDER SHOULD BE CONSIDERED FOR A RESIDENCY RESTRICTION, IT SHALL SO NOTIFY THE RESPONDENT OR OTHER INDIVIDUAL, THE DISTRICT ATTORNEY AND THE SENTENCING COURT IN WRITING. THE WRITTEN NOTICE MUST BE ACCOMPANIED BY A WRITTEN REPORT FROM A PSYCHIATRIC EXAMINER THAT EXPLAINS THE BASIS OF THE RECOMMENDATION. THE CASE REVIEW TEAM SHALL PROVIDE ITS WRITTEN NOTICE TO THE RESPONDENT, THE DISTRICT ATTORNEY AND THE SENTENCING COURT WITHIN FORTY-FIVE DAYS OF THE COMMISSIONER RECEIVING THE NOTICE OF THE ANTICIPATED RELEASE. HOWEVER, FAILURE TO DO SO WITHIN THAT TIME PERIOD SHALL NOT AFFECT THE VALIDITY OF SUCH NOTICE OR FINDING OR ANY SUBSEQUENT ACTION.

S 13. Subdivision 14 of section 259-c of the executive law is REPEALED.

S 14. Subdivision 4-a of section 65.10 of the penal law is REPEALED.

S 15. The district attorney may file a petition to seek the imposition of a residency restriction for a sex offender whose victim was a child under the age of eighteen and who is at liberty on the effective date of this act. A petition filed pursuant to this section shall be filed with the sentencing court or the court which made the determination regarding the level of notification of such offender within one year of the effective date of this act. The petition shall set forth the reasons for seeking the residency restriction and the district attorney shall bear the burden, by clear and convincing evidence, of proving the facts supporting the imposition of a residency restriction. Upon receipt of a petition submitted pursuant to this section, the court shall order an evaluation pursuant to section 10.05 of the mental hygiene law and proceed in a manner consistent with section 168-n of the correction law. The court shall determine whether to impose a residency restriction on the offender named in the petition. In the event that the district attorney's petition is granted, the sex offender may appeal as of right from the order, pursuant to the provisions of articles 55, 56 and 57 of the civil practice law and rules. Where counsel has been assigned to represent the offender upon the ground that he or she is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, in accordance with section 18-B of the county law.

S 16. This act shall take effect on the one hundred eightieth day after it shall have become a law.