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2015-2016 Regular Sessions

I N S E N A T E

April 28, 2015

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, 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 SCHOOL GROUNDS, AS SUCH TERM
6 IS DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW,
7 OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF
8 SECTION 10.00 OF THE PENAL LAW, THE MEASUREMENTS TO BE TAKEN IN STRAIGHT
9 LINES FROM THE CENTER OF THE NEAREST ENTRANCE OF THE RESIDENCE TO THE
10 NEAREST REAL PROPERTY BOUNDARY LINE COMPRISING SUCH SCHOOL GROUNDS OR
11 PLAYGROUND.
12 S 2. Section 168-f of the correction law is amended by adding a new
13 subdivision 4-a to read as follows:
14 4-A. A SEX OFFENDER WHO HAS ESTABLISHED A RESIDENCE SHALL NOT CHANGE
15 SAID RESIDENCE SO AS TO RESIDE WITHIN SCHOOL GROUNDS, AS SUCH TERM IS
16 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A
17 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
18 10.00 OF THE PENAL LAW, THE MEASUREMENTS TO BE TAKEN IN STRAIGHT LINES
19 FROM THE CENTER OF THE NEAREST ENTRANCE OF THE RESIDENCE TO THE REAL
20 PROPERTY BOUNDARY LINE COMPRISING SUCH SCHOOL GROUNDS OR PLAYGROUND.
21 S 3. Subdivision 2 of section 168-k of the correction law, as amended
22 by chapter 684 of the laws of 2005, is amended to read as follows:

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

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1 2. The division shall advise the board that the sex offender has
2 established residence in this state. The board shall determine whether
3 the sex offender is required to register with the division. If it is
4 determined that the sex offender is required to register, the division
5 shall notify the sex offender of his or her duty to register under this
6 article and shall require the sex offender to sign a form as may be
7 required by the division acknowledging that the duty to register and the
8 procedure for registration has been explained to the sex offender. The
9 division shall obtain on such form the address where the sex offender
10 expects to reside within the state and the sex offender shall retain one
11 copy of the form and send two copies to the division which shall provide
12 the information to the law enforcement agency having jurisdiction where
13 the sex offender expects to reside within this state. No later than
14 thirty days prior to the board making a recommendation, the sex offender
15 shall be notified that his or her case is under review and that he or
16 she is permitted to submit to the board any information relevant to the
17 review. After reviewing any information obtained, and applying the
18 guidelines established in subdivision five of section one hundred
19 sixty-eight-1 of this article, the board shall within sixty calendar
20 days make a recommendation regarding the level of notification pursuant
21 to subdivision six of section one hundred sixty-eight-1 of this article
22 and whether such sex offender shall be designated a sexual predator,
23 sexually violent offender, or predicate sex offender as defined in
24 subdivision seven of section one hundred sixty-eight-a of this article.
25 This recommendation shall be confidential and shall not be available for
26 public inspection. It shall be submitted by the board to the county
27 court or supreme court and to the district attorney in the county of
28 residence of the sex offender and to the sex offender. It shall be the
29 duty of the county court or supreme court in the county of residence of
30 the sex offender, applying the guidelines established in subdivision
31 five of section one hundred sixty-eight-1 of this article, to determine
32 the level of notification pursuant to subdivision six of section one
33 hundred sixty-eight-1 of this article and whether such sex offender
34 shall be designated a sexual predator, sexually violent offender, or
35 predicate sex offender as defined in subdivision seven of section one
36 hundred sixty-eight-a of this article. At least thirty days prior to the
37 determination proceeding, such court shall notify the district attorney
38 and the sex offender, in writing, of the date of the determination
39 proceeding and the court shall also provide the district attorney and
40 sex offender with a copy of the recommendation received from the board
41 and any statement of the reasons for the recommendation received from
42 the board. This notice shall include the following statement or a
43 substantially similar statement: "This proceeding is being held to
44 determine whether you will be classified as a level 3 offender (risk of
45 repeat offense is high), a level 2 offender (risk of repeat offense is
46 moderate), or a level 1 offender (risk of repeat offense is low), or
47 whether you will be designated as a sexual predator, a sexually violent
48 offender or a predicate sex offender, which will determine how long you
49 must register as a sex offender, WHERE YOU MAY RESIDE, WORK OR TRAVEL,
50 and how much information can be provided to the public concerning your
51 registration. If you fail to appear at this proceeding, without suffi-
52 cient excuse, it shall be held in your absence. Failure to appear may
53 result in a longer period of registration or a higher level of community
54 notification because you are not present to offer evidence or contest
55 evidence offered by the district attorney." The court shall also advise
56 the sex offender that he or she has a right to a hearing prior to the

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

54 S. 4. Subdivision 1 of section 203 of the correction law, as added by
55 section 32 of subpart A of part C of chapter 62 of the laws of 2011, is
56 amended to read as follows:

1 1. The commissioner shall promulgate rules and regulations that shall
2 include guidelines and procedures on the placement of sex offenders
3 designated as level two or level three offenders pursuant to article
4 six-C of this chapter, PROVIDED THAT SUCH GUIDELINES AND PROCEDURES
5 SHALL PROHIBIT THE PLACEMENT OF SUCH SEX OFFENDERS WITHIN ANY 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. Such regu-
9 lations shall provide instruction on certain factors to be considered
10 when investigating and approving the residence of level two or level
11 three sex offenders released on presumptive release, parole, conditional
12 release or post-release supervision. Such factors shall include the
13 following:

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

18 (b) the number of registered sex offenders residing at a particular
19 property;

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

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

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

28 S 5. The correction law is amended by adding a new section 209 to read
29 as follows:

30 S 209. REGULATIONS FOR RELEASE OF SEX OFFENDERS DESIGNATED AS LEVEL
31 ONE OFFENDERS. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS
32 THAT SHALL INCLUDE GUIDELINES AND PROCEDURES ON THE PLACEMENT OF SEX
33 OFFENDERS DESIGNATED AS LEVEL ONE OFFENDERS PURSUANT TO ARTICLE SIX-C OF
34 THIS CHAPTER WHO HAVE BEEN CONVICTED OF AN OFFENSE DEFINED IN ARTICLE
35 ONE HUNDRED THIRTY, TWO HUNDRED THIRTY-FIVE OR TWO HUNDRED SIXTY-THREE,
36 OR SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW AND THE VICTIM OF
37 SUCH OFFENSE WAS UNDER THE AGE OF EIGHTEEN AT THE TIME OF SUCH OFFENSE,
38 PROVIDED THAT SUCH GUIDELINES AND PROCEDURES SHALL PROHIBIT THE PLACE-
39 MENT OF SUCH SEX OFFENDERS WITHIN ANY SCHOOL GROUNDS, AS SUCH TERM IS
40 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A
41 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
42 10.00 OF THE PENAL LAW.

43 S 6. Subdivision 14 of section 259-c of the executive law, as amended
44 by section 38-b of subpart A of part C of chapter 62 of the laws of
45 2011, is amended to read as follows:

46 14. notwithstanding any other provision of law to the contrary, where
47 a person serving a sentence for an offense defined in article one
48 hundred thirty, one hundred thirty-five or two hundred sixty-three of
49 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
50 the victim of such offense was under the age of eighteen at the time of
51 such offense or such person has been designated a level TWO OR LEVEL
52 three sex offender pursuant to subdivision six of section one hundred
53 sixty-eight-1 of the correction law, is released on parole or condi-
54 tionally released pursuant to subdivision one or two of this section,
55 the board shall require, as a mandatory condition of such release, that
56 such sentenced offender shall refrain from knowingly entering into or

1 upon any school grounds, as that term is defined in subdivision fourteen
2 of section 220.00 of the penal law, [or] any other facility or institu-
3 tion primarily used for the care or treatment of persons under the age
4 of eighteen while one or more of such persons under the age of eighteen
5 are present, OR ANY PLAYGROUND, AS THAT TERM IS DEFINED IN SUBDIVISION
6 TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, provided however, that
7 when such sentenced offender is a registered student or participant or
8 an employee of such facility or institution or entity contracting there-
9 with or has a family member enrolled in such facility or institution,
10 such sentenced offender may, with the written authorization of his or
11 her parole officer and the superintendent or chief administrator of such
12 facility, institution or grounds, enter such facility, institution or
13 upon such grounds for the limited purposes authorized by the parole
14 officer and superintendent or chief officer. Nothing in this subdivi-
15 sion shall be construed as restricting any lawful condition of super-
16 vision that may be imposed on such sentenced offender.

17 S 7. Subdivision 4 of section 243 of the executive law, as added by
18 chapter 568 of the laws of 2008 and the opening paragraph as amended by
19 section 17 of part A of chapter 56 of the laws of 2010, is amended to
20 read as follows:

21 4. The office shall recommend to the commissioner rules and regu-
22 lations which shall include guidelines and procedures on the placement
23 of sex offenders designated as level two or level three offenders pursu-
24 ant to article six-C of the correction law, PROVIDED THAT SUCH RECOM-
25 MENDED RULES AND REGULATIONS SHALL PROHIBIT THE PLACEMENT OF SUCH SEX
26 OFFENDERS WITHIN ANY SCHOOL GROUNDS, AS SUCH TERM IS DEFINED IN SUBDIVI-
27 SION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A PLAYGROUND, AS
28 SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE
29 PENAL LAW. Such regulations shall instruct local probation departments
30 to consider certain factors when investigating and approving the resi-
31 dence of level two or level three sex offenders sentenced to a period of
32 probation. Such factors shall include the following:

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

37 (b) the number of registered sex offenders residing at a particular
38 property;

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

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

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

47 S 8. Subdivision (a) of section 10.11 of the mental hygiene law, as
48 added by chapter 7 of the laws of 2007, paragraphs 1 and 2 as amended by
49 section 118-e of subpart B of part C of chapter 62 of the laws of 2011,
50 is amended to read as follows:

51 (a) (1) Before ordering the release of a person to a regimen of strict
52 and intensive supervision and treatment pursuant to this article, the
53 court shall order that the department of corrections and community
54 supervision recommend supervision requirements to the court. These
55 supervision requirements, which shall be developed in consultation with
56 the commissioner, SHALL INCLUDE A PROHIBITION AGAINST KNOWINGLY ENTERING

1 INTO OR UPON ANY SCHOOL GROUNDS, AS THAT TERM IS DEFINED IN SUBDIVISION
2 FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, ANY OTHER FACILITY OR
3 INSTITUTION PRIMARILY USED FOR THE CARE OR TREATMENT OF PERSONS UNDER
4 THE AGE OF EIGHTEEN WHILE ONE OR MORE OF SUCH PERSONS UNDER THE AGE OF
5 EIGHTEEN ARE PRESENT, OR A PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDI-
6 VISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW, AND may include but
7 need not be limited to, electronic monitoring or global positioning
8 satellite tracking for an appropriate period of time, polygraph monitor-
9 ing, specification of residence or type or residence, prohibition of
10 contact with identified past or potential victims, strict and intensive
11 supervision by a parole officer, and any other lawful and necessary
12 conditions that may be imposed by a court. In addition, after consulta-
13 tion with the psychiatrist, psychologist or other professional primarily
14 treating the respondent, the commissioner shall recommend a specific
15 course of treatment. A copy of the recommended requirements for super-
16 vision and treatment shall be given to the attorney general and the
17 respondent and his or her counsel a reasonable time before the court
18 issues its written order pursuant to this section.

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

45 S 9. Section 10.00 of the penal law is amended by adding a new subdi-
46 vision 22 to read as follows:

47 22. "PLAYGROUND" MEANS (A) IN OR WITHIN ANY BUILDING, STRUCTURE, PLAY-
48 ING FIELD, OR LAND CONTAINED WITHIN THE BOUNDARY OF LAND OWNED, LEASED
49 OR MAINTAINED BY THE STATE OR ANY AGENCY OR MUNICIPALITY THEREOF OR BY
50 ANY NOT-FOR-PROFIT CORPORATION, CORPORATION OR ASSOCIATION THAT IS USED
51 ON A REGULAR BASIS AS A RECREATION AREA FOR CHILDREN AND IS SO DESIG-
52 NATED, OR (B) ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOU-
53 SAND FEET OF THE PERIMETER OF ANY SUCH PLAYGROUND OR ANY PARKED AUTOMO-
54 BILE OR OTHER PARKED VEHICLE LOCATED WITHIN ONE THOUSAND FEET OF THE
55 REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH PLAYGROUND. FOR THE

PURPOSES OF THIS SECTION AN "AREA ACCESSIBLE TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PARKS, STORES AND RESTAURANTS.

S 10. Paragraph (a) of subdivision 4-a of section 65.10 of the penal law, as amended by chapter 67 of the laws of 2008, is amended to read as follows:

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

S 11. Subdivision 8 of section 20 of the social services law, as amended by section 150 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

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

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

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

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

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

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

1 (iii) proximity of the entities with vulnerable populations;
2 (iv) accessibility to family members, friends or other supportive
3 services, including but not limited to locally available sex offender
4 treatment programs with preference for placement of such individuals
5 into programs that have demonstrated effectiveness in reducing sex
6 offender recidivism and increasing public safety; and
7 (v) investigation and approval of such placement by the department of
8 corrections and community supervision.
9 S 12. This act shall take effect on the first of November next
10 succeeding the date on which it shall have become a law.