

5000--B

2015-2016 Regular Sessions

I N S E N A T E

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- 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

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

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

48 3. For sex offenders released on probation or discharged upon payment
49 of a fine, conditional discharge or unconditional discharge, it shall be
50 the duty of the court applying the guidelines established in subdivision
51 five of section one hundred sixty-eight-1 of this article to determine
52 the level of notification pursuant to subdivision six of section one
53 hundred sixty-eight-1 of this article and whether such sex offender
54 shall be designated a sexual predator, sexually violent offender, or
55 predicate sex offender as defined in subdivision seven of section one
56 hundred sixty-eight-a of this article. At least fifteen days prior to

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

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

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

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

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

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

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

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

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

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

1 conclusions of law on which the determinations are based, SUCH ORDER
2 SHALL ALSO INCLUDE ANY CONDITIONS THAT ARE REQUIRED TO BE IMPOSED PURSU-
3 ANT TO SECTION 65.10 OF THE PENAL LAW. A copy of the order shall be
4 submitted by the court to the division. Upon application of either
5 party, the court shall seal any portion of the court file or record
6 which contains material that is confidential under any state or federal
7 statute. Either party may appeal as of right from the order pursuant to
8 the provisions of articles fifty-five, fifty-six and fifty-seven of the
9 civil practice law and rules. Where counsel has been assigned to repre-
10 sent the sex offender upon the ground that the sex offender is finan-
11 cially unable to retain counsel, that assignment shall be continued
12 throughout the pendency of the appeal, and the person may appeal as a
13 poor person pursuant to article eighteen-B of the county law.

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

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

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

34 (b) the number of registered sex offenders residing at a particular
35 property;

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

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

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

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

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

1 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
2 10.00 OF THE PENAL LAW.

3 S 8. Subdivision 14 of section 259-c of the executive law, as amended
4 by section 38-b of subpart A of part C of chapter 62 of the laws of
5 2011, is amended to read as follows:

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

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

37 4. The office shall recommend to the commissioner rules and regu-
38 lations which shall include guidelines and procedures on the placement
39 of sex offenders designated as level two or level three offenders pursu-
40 ant to article six-C of the correction law, PROVIDED THAT SUCH RECOM-
41 MENDED RULES AND REGULATIONS SHALL PROHIBIT THE PLACEMENT OF SUCH SEX
42 OFFENDERS WITHIN THE AREA DEFINED AS SCHOOL GROUNDS, AS SUCH TERM IS
43 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, OR A
44 PLAYGROUND, AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION
45 10.00 OF THE PENAL LAW. Such regulations shall instruct local probation
46 departments to consider certain factors when investigating and approving
47 the residence of level two or level three sex offenders sentenced to a
48 period of probation. Such factors shall include the following:

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

53 (b) the number of registered sex offenders residing at a particular
54 property;

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

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

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

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

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

36 (2) Before issuing its written order, the court shall afford the
37 parties an opportunity to be heard, and shall consider any additional
38 submissions by the respondent and the attorney general concerning the
39 proposed conditions of the regimen of strict and intensive supervision
40 and treatment. The court shall issue an order specifying the conditions
41 of the regimen of strict and intensive supervision and treatment, which
42 shall include A CONDITION THAT THE RESPONDENT SHALL REFRAIN FROM KNOW-
43 INGLY ENTERING INTO OR UPON ANY SCHOOL GROUNDS, AS THAT TERM IS DEFINED
44 IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW, ANY OTHER
45 FACILITY OR INSTITUTION PRIMARILY USED FOR THE CARE OR TREATMENT OF
46 PERSONS UNDER THE AGE OF EIGHTEEN WHILE ONE OR MORE OF SUCH PERSONS
47 UNDER THE AGE OF EIGHTEEN ARE PRESENT, OR A PLAYGROUND, AS SUCH TERM IS
48 DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 10.00 OF THE PENAL LAW,
49 specified supervision requirements and compliance with a specified
50 course of treatment. A written statement of the conditions of the regi-
51 men of strict and intensive supervision and treatment shall be given to
52 the respondent and to his or her counsel, any designated service provid-
53 ers or treating professionals, the commissioner, the attorney general
54 and the supervising parole officer. The court shall require the depart-
55 ment of corrections and community supervision to take appropriate
56 actions to implement the supervision plan and assure compliance with the

1 conditions of the regimen of strict and intensive supervision and treat-
2 ment AND TO INVESTIGATE AND APPROVE THE LOCATION OF THE RESPONDENT'S
3 RESIDENCE. A regimen of strict and intensive supervision does not toll
4 the running of any form of supervision in criminal cases, including but
5 not limited to post-release supervision and parole.

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

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

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

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

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

51 8. (a) The office of temporary and disability assistance shall promul-
52 gate rules and regulations for the administration of this subdivision.
53 The rules and regulations shall provide for the conditions under which
54 local social services officials determine the placement of applicants
55 for and recipients of public assistance for whom a notice pursuant to

1 section two hundred three of the correction law[,] has been received and
2 who are:

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

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

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

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

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

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

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

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

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