STATE OF NEW YORK

1651--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 12, 2017

Introduced by M. of A. MURRAY, FINCH, ENGLEBRIGHT, JAFFEE, THIELE, FITZPATRICK, B. MILLER, STEC, McKEVITT, MALLIOTAKIS, GOODELL, CROUCH, HAWLEY, GIGLIO, PALMESANO, CASTORINA, BRABENEC, McDONOUGH, LAWRENCE, GRAF, McLAUGHLIN, RAIA, PALUMBO, CURRAN, RA, BARCLAY, ERRIGO, LUPINACCI, JEAN-PIERRE, DiPIETRO, NORRIS -- Multi-Sponsored by -- M. of A. GARBARINO, KEARNS, OAKS -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to sex offender registration and residency restrictions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 168-h of the correction law, as amended by chapter 11 of the laws of 2002, and subdivisions 1 and 2 as amended by chapter 1 of the laws of 2006, is amended to read as follows:

§ 168-h. Duration of registration and verification. 1. The duration of registration and verification for a sex offender who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification, shall be annually for a period of twenty years from the initial date of registration.

2. **Notwithstanding the foregoing, a sex offender who is classified as a level one risk and has been designated as a sexual predator, sexually violent offender, or predicate sex offender or has been convicted of or has been convicted for an attempt to commit:**

(i) any of the provisions of section 120.70, 130.35, 130.50, 130.53, 130.65, 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.90, 130.91, 130.95, 130.96, 135.05, 135.10, 135.20, 135.25, 230.06, 230.32, 250.50, 255.27, 263.10, 263.15 or 263.30 of the penal law;

(ii) any of the provisions of section 2251, 2251A, 2252, 2252A, 2260, 2422, 2423 or 2425 of title 18 of the United States code; or

(iii) has been convicted of any offense in any other jurisdiction which includes all of the essential elements of any of the foregoing crimes in this subdivision, shall register annually for life.

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

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3. A sex offender who is classified as a level one risk and has been convicted of or has been convicted for an attempt to commit any of the provisions of section 130.20, 130.25, 130.30, 130.40, 130.45, 130.52, 130.55 or 130.60 of the penal law, or has been convicted of any offense in any other jurisdiction which includes all of the essential elements of any of the foregoing crimes in this subdivision, shall register annually for life unless at the time of the act, the defendant was less than twenty-one years old, in which case registration shall be annually for a period of twenty years from the initial date of registration unless the sex offender has been designated a sexual predator, sexually violent offender or predicate sex offender and is required to register for life.

4. The duration of registration and verification for a sex offender who, on or after March eleventh, two thousand two, is designated a sexual predator, or a sexually violent offender, or a predicate sex offender, or who is classified as a level two or level three risk, shall be annually for life. Notwithstanding the foregoing, a sex offender who is classified as a **level one or** level two risk and who is not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register and verify **after a minimum period of thirty years of registration** as provided by subdivision one of section one hundred sixty-eight-o of this article.

[~~3.~~] **5.** Any sex offender having been designated a level three risk or a sexual predator shall also personally verify his or her address every ninety calendar days with the local law enforcement agency having jurisdiction where the offender resides.

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

1. A determination that an offender is 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 shall be made prior to the discharge, parole, release to post-release supervision or release of such offender by the sentencing court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article. **The court shall assign a sexual predator designation to a sex offender determined to be a sexual predator as defined in subdivision seven of section one hundred sixty-eight-a of this article. The court shall assign a sexually violent offender designation to an offender convicted of a sexually violent offense as defined in subdivision three of section one hundred sixty-eight-a of this article. The court shall assign a predicate sex offender designation to a sex offender who is a predicate sex offender pursuant to subdivision seven of section one hundred sixty-eight-a of this article.**

§ 3. Subdivision 1 of section 168-o of the correction law, as amended by chapter 1 of the laws of 2006, is amended to read as follows:

1. Any sex offender who is classified as a **level one or** level two risk, and who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, who is required to register or verify pursuant to this article and who has been registered for a minimum period of thirty years may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court or by the court which made the determination regarding duration of registration and level of notification. The sex offender shall bear the burden of proving by clear and convincing evidence that his or her risk of repeat offense and threat to public safety is such that registration

or verification is no longer necessary. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to this article upon conviction of any offense requiring registration in the future. Such a petition shall not be considered more than once every two years. In the event that the sex offender's petition for relief is granted, the district attorney 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.

§ 4. Section 168-w of the correction law, as renumbered by chapter 604 of the laws of 2005, is renumbered section 168-x and a new section 168-w is added to read as follows:

§ 168-w. Child and victim safety zones. Local or state law enforcement agencies, or their designees may monitor and verify registration compliance and counties, may enact by local law or resolution requirements for: 1. sex offenders to provide information to law enforcement or their designee to verify home and employment address which have been registered pursuant to the provisions of this article; 2. sex offenders registered as homeless to provide a description of their location every twenty-four hours to law enforcement or its designee in that jurisdiction; and/or 3. sex offender residency restrictions for sex offenders required to register pursuant to this article who are classified as a level three risk and/or, who committed an offense against a minor and/or who have been assigned a designation pursuant to this article, provided that such restrictions:

(a) do not require a sex offender to live beyond one thousand feet from public, private and charter schools for all level three registrants, for registrants who committed an offense against a minor, and for registrants who have been assigned a designation pursuant to this article;

(b) do not require a sex offender to live beyond a quarter mile from the workplace and residence of any registrant's victim or victims; and

(c) do not require a sex offender who caused the death of his or her victim to live beyond a quarter mile from the prior residence of the deceased victim, if the spouse, child, step child, sibling, parent, grandparent or grandchild of the victim continues to reside at that residence.

§ 5. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 6. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all sex offenders registered or required to register immediately prior to the effective date of this act, or who are required to register on or after such date.