

# STATE OF NEW YORK

404

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

Introduced by M. of A. GUNTHER, KOLB, SANTABARBARA, BARRETT, STECK, BRINDISI, SKARTADOS, SIMANOWITZ, SKOUFIS, SALADINO, GOODELL, GRAF, MURRAY, OAKS -- Multi-Sponsored by -- M. of A. GIGLIO, JOHNS, McDONOUGH, MONTESANO, PALMESANO, RAIA, STEC -- read once and referred to the Committee on Correction

AN ACT to amend the penal law and the correction law, in relation to enacting "The Domestic Violence Protection Act - Brittany's Law"

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

1 Section 1. This act shall be known and may be cited as "The Domestic  
2 Violence Protection Act - Brittany's Law".

3 § 2. The penal law is amended by adding two new sections 195.03 and  
4 195.04 to read as follows:

5 § 195.03 Failure to register or verify as a violent felony offender in  
6 the second degree.

7 A person is guilty of failure to register or verify as a violent felo-  
8 ny offender in the second degree when, being a violent felony offender  
9 required to register or verify pursuant to article six-B of the  
10 correction law, he or she fails to register or verify in the manner and  
11 within the time periods provided for in such article.

12 Failure to register or verify as a violent felony offender in the  
13 second degree is a class E felony.

14 § 195.04 Failure to register or verify as a violent felony offender in  
15 the first degree.

16 A person is guilty of failure to register or verify as a violent felo-  
17 ny offender in the first degree when he or she commits the crime of  
18 failure to register or verify as a violent felony offender in the second  
19 degree and has previously been convicted of failure to register or veri-  
20 fy as a violent felony offender in the second degree as defined in  
21 section 195.03 of this article.

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

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1 Failure to register or verify as a violent felony offender in the  
2 first degree is a class D felony.

3 § 3. The correction law is amended by adding a new article 6-B to read  
4 as follows:

5 ARTICLE 6-B

6 VIOLENT FELONY OFFENDER REGISTRATION

7 Section 162. Definitions.

8 163. Duties of the division; registration information.

9 164. Violent felony offender; relocation; notification.

10 165. Duties of the court.

11 166. Discharge of violent felony offender from correctional  
12 facility; duties of official in charge.

13 167. Duty to register.

14 167-a. Prior convictions; duty to inform and register.

15 167-b. Duration of registration.

16 167-c. Registration requirements.

17 167-d. Notification of local law enforcement agencies of change  
18 of address.

19 167-e. Registration for change of address from another state.

20 167-f. Board of examiners of violent felony offenders.

21 167-g. Review.

22 167-h. Judicial determination.

23 167-i. Petition for relief.

24 167-j. Special telephone number.

25 167-k. Violent predator subdirectory.

26 167-l. Immunity from liability.

27 167-m. Annual report.

28 167-n. Failure to register; penalty.

29 167-o. Unauthorized release of information.

30 167-p. Severability.

31 167-q. Subdirectory; internet posting.

32 § 162. Definitions. As used in this article, the following definitions  
33 apply:

34 1. "Violent felony offender" includes any person who is convicted of a  
35 violent felony offense as defined under section 70.02 of the penal law  
36 or a class A felony offense defined in the penal law other than a class  
37 A felony offense defined in article two hundred twenty of the penal law.  
38 Convictions that result from or are connected with the same act, or  
39 result from offenses committed at the same time, shall be counted for  
40 the purpose of this article as one conviction. Any conviction set aside  
41 pursuant to law is not a conviction for purposes of this article.

42 2. "Violent felony offense" means a conviction for an offense as  
43 defined under section 70.02 of the penal law or a class A felony offense  
44 defined in the penal law other than a class A offense defined in article  
45 two hundred twenty of the penal law.

46 3. "Law enforcement agency having jurisdiction" means the chief law  
47 enforcement officer in the village, town or city in which the violent  
48 felony offender expects to reside upon his or her discharge, probation,  
49 parole or upon any form of state or local conditional release.

50 4. "Division" means the division of criminal justice services estab-  
51 lished under article thirty-five of the executive law.

52 5. "Hospital" means a hospital as defined in subdivision two of  
53 section four hundred of this chapter and applies to persons committed to  
54 such hospital by order of commitment made pursuant to article sixteen of  
55 this chapter.

1 6. "Violent predator" means a person who has been convicted of a  
2 violent felony offense as defined in this article, or a violent felony  
3 offender as defined in this article who suffers from a mental abnor-  
4 mality that makes such person likely to engage in violent conduct.

5 7. "Mental abnormality" means a congenital or acquired condition of a  
6 person that affects the emotional or volitional capacity of the person  
7 in a manner that predisposes that person to the commission of criminal  
8 violent acts to a degree that makes the person a menace to the health  
9 and safety of other persons.

10 8. "Board" means the board of examiners of violent felony offenders  
11 established pursuant to section one hundred sixty-seven-f of this arti-  
12 cle.

13 9. "Local correctional facility" means a local correctional facility  
14 as that term is defined in subdivision sixteen of section two of this  
15 chapter.

16 § 163. Duties of the division; registration information. 1. The divi-  
17 sion shall establish and maintain a file of individuals required to  
18 register pursuant to the provisions of this article which shall include  
19 the following information of each registrant:

20 (a) The violent felony offender's name, all aliases used, date of  
21 birth, sex, race, height, weight, eye color, driver's license number,  
22 home address and/or expected place of domicile.

23 (b) A photograph and set of fingerprints.

24 (c) A description of the offense for which the violent felony offender  
25 was convicted, the date of conviction and the sentence imposed.

26 (d) Any other information deemed pertinent by the division.

27 2. The division is authorized to make the registry available to any  
28 regional or national registry of violent felony offenders for the  
29 purpose of sharing information. The division shall accept files from any  
30 regional or national registry of violent felony offenders and shall make  
31 such files available when requested pursuant to the provisions of this  
32 article. The division shall require that no information included in the  
33 registry shall be made available except in the furtherance of the  
34 provisions of this article.

35 3. The division shall develop a standardized registration form to be  
36 made available to the appropriate authorities and promulgate rules and  
37 regulations to implement the provisions of this section.

38 4. The division shall mail a nonforwardable verification form to the  
39 last reported address of the person for annual verification require-  
40 ments.

41 5. The division shall also establish and operate a telephone number as  
42 provided for in section one hundred sixty-seven-j of this article.

43 6. The division shall also establish a violent predator subdirectory  
44 pursuant to section one hundred sixty-seven-k of this article.

45 7. The division shall also establish a public awareness campaign to  
46 advise the public of the provisions of this article.

47 § 164. Violent felony offender; relocation; notification. 1. In the  
48 case of any violent felony offender, it shall be the duty of the depart-  
49 ment, hospital or local correctional facility at least ten calendar days  
50 prior to the release or discharge of any violent felony offender from a  
51 correctional facility, hospital or local correctional facility to notify  
52 the law enforcement agency having jurisdiction where appropriate, and  
53 law enforcement agency having had jurisdiction at the time of his or her  
54 conviction, of the contemplated release or discharge of such violent  
55 felony offender, informing such law enforcement agencies of the name and  
56 aliases of the violent felony offender, the address at which he or she

1 proposes to reside, the address at which he or she resided at the time  
2 of his or her conviction, the amount of time remaining to be served, if  
3 any, on the full term for which he or she was sentenced, and the nature  
4 of the crime for which he or she was sentenced, transmitting at the same  
5 time a copy of such violent felony offender's fingerprints and photo-  
6 graph and a summary of his or her criminal record. If such violent felo-  
7 ny offender changes his or her place of residence while on parole, such  
8 notification of the change of residence shall be sent by the violent  
9 felony offender's parole officer within forty-eight hours to the law  
10 enforcement agency in which the new place of residence is located.

11 2. In the case of any violent felony offender convicted and sentenced  
12 to probation, conditional discharge or unconditional discharge, it shall  
13 be the duty of the court within twenty-four hours after such sentence to  
14 notify the law enforcement agency having jurisdiction, where appropri-  
15 ate, and the law enforcement agency having had jurisdiction at the time  
16 of his or her conviction, if different from where he or she currently  
17 resides, and/or where he or she currently resides, of the sentence of  
18 probation, conditional discharge or unconditional discharge, informing  
19 such law enforcement agencies of the name and aliases of the person, the  
20 address at which he or she proposes to reside, resided at and/or at  
21 which he or she currently resides, the amount of time to be served on  
22 probation, and the nature of the crime for which he or she was  
23 sentenced, transmitting at the same time a copy of such violent felony  
24 offender's fingerprints and photograph and a summary of his or her crim-  
25 inal record. If such person changes his or her place of residence while  
26 on probation, such notification of the change of residence shall be sent  
27 by the violent felony offender's probation officer within forty-eight  
28 hours to the law enforcement agency having jurisdiction in which the new  
29 place of residence is located.

30 3. In the case of any violent felony offender, who on the effective  
31 date of this subdivision is on parole or probation, it shall be the duty  
32 of such violent felony offender's parole or probation officer within  
33 forty-five calendar days of the effective date of this subdivision to  
34 notify the law enforcement agency having had jurisdiction in which such  
35 person resided at the time of his or her conviction, if different from  
36 where he or she currently resides and/or where he or she currently  
37 resides, of the name and aliases of such violent felony offender, the  
38 address at which he or she resided and/or at which he or she currently  
39 resides, the amount of time to be served on parole or probation, the  
40 nature of the crime for which he or she was sentenced, transmitting at  
41 the same time a copy of such violent felony offender's fingerprints and  
42 photograph and a summary of his or her criminal record. If such violent  
43 felony offender changes his or her place of residence while on parole or  
44 probation, such notification of the change of residence shall be sent by  
45 the violent felony offender's parole or probation officer within forty-  
46 eight hours to the law enforcement agency having jurisdiction in which  
47 the new place of residence is located.

48 4. In the case in which any violent felony offender escapes from a  
49 state or local correctional facility or hospital, the designated offi-  
50 cial of the facility or hospital where the person was confined shall  
51 notify within twenty-four hours the law enforcement agency having had  
52 jurisdiction at the time of his or her conviction, informing such law  
53 enforcement agency of the name and aliases of the person, and the  
54 address at which he or she resided at the time of his or her conviction,  
55 the amount of time remaining to be served if any, on the full term for  
56 which he or she was sentenced, and the nature of the crime for which he

1 or she was sentenced, transmitting at the same time a copy of such  
2 violent felony offender's fingerprints and photograph and a summary of  
3 his or her criminal record.

4 § 165. Duties of the court. 1. Upon conviction the court shall certify  
5 that the person is a violent felony offender and shall include the  
6 certification in the order of commitment. The court shall also advise  
7 the violent felony offender of the duties of this article.

8 2. Any violent felony offender, who is released on probation or  
9 discharged upon payment of a fine shall, prior to such release or  
10 discharge, be informed of his or her duty to register under this article  
11 by the court in which he or she was convicted. Where the court orders a  
12 violent felony offender released on probation, such order must include a  
13 provision requiring that he or she comply with the requirements of this  
14 article. Where such violent felony offender violates such provision,  
15 probation may be immediately revoked in the manner provided by article  
16 four hundred ten of the criminal procedure law. The court shall require  
17 the violent felony offender to read and sign such form as may be  
18 required by the division stating the duty to register and the procedure  
19 for registration has been explained to him or her. The court shall on  
20 such form obtain the address where the violent felony offender expects  
21 to reside upon his or her release, and shall report the address to the  
22 division. The court shall give one copy of the form to the violent felo-  
23 ny offender and shall send two copies to the division which shall  
24 forward one copy to the law enforcement agency having jurisdiction where  
25 the violent felony offender expects to reside upon his or her release.  
26 Within ten calendar days of being released on probation or discharged  
27 upon payment of a fine, such violent felony offender shall register with  
28 the division for purposes of verifying such violent felony offender's  
29 intended place of residence. On each anniversary of the violent felony  
30 offender's original registration date, the provisions of section one  
31 hundred sixty-seven of this article shall apply. The division shall  
32 also immediately forward the conviction data and fingerprints to the  
33 Federal Bureau of Investigation if not already obtained.

34 3. For violent felony offenders under this section, it shall be the  
35 duty of the court applying the guidelines established in subdivision  
36 five of section one hundred sixty-seven-f of this article to determine  
37 the duration of registration pursuant to section one hundred sixty-sev-  
38 en-b of this article and notification pursuant to subdivision six of  
39 section one hundred sixty-seven-f of this article. In making the deter-  
40 mination, the court shall review any victim's statement and any materi-  
41 als submitted by the violent felony offender. The court shall also allow  
42 the violent felony offender to appear and be heard, and inform the  
43 violent felony offender of his or her right to have counsel appointed,  
44 if necessary.

45 § 166. Discharge of violent felony offender from correctional facili-  
46 ty; duties of official in charge. 1. Any violent felony offender, to be  
47 discharged, paroled or released from any state or local correctional  
48 facility, hospital or institution where he or she was confined or  
49 committed, shall within forty-five calendar days prior to discharge,  
50 parole or release, be informed of his or her duty to register under this  
51 article, by the facility in which he or she was confined or committed.  
52 The facility shall require the violent felony offender to read and sign  
53 such form as may be required by the division stating the duty to regis-  
54 ter and the procedure for registration has been explained to him or her.  
55 The facility shall obtain on such form the address where the violent  
56 felony offender expects to reside upon his or her discharge, parole or

1 release and shall report the address to the division. The facility shall  
2 give one copy of the form to the violent felony offender and shall send  
3 two copies to the division which shall forward one copy to the law  
4 enforcement agency having jurisdiction where the violent felony offender  
5 expects to reside upon his or her discharge, parole or release. In addi-  
6 tion, the facility shall give the violent felony offender a form to  
7 register with the division within ten calendar days for purposes of  
8 verifying such violent felony offender's intended place of residence.

9 2. The division shall also immediately transmit the conviction data  
10 and fingerprints to the Federal Bureau of Investigation, if not already  
11 obtained.

12 § 167. Duty to register. 1. Any violent felony offender, who is  
13 discharged, paroled or released from any state or local correctional  
14 facility, hospital or institution where he or she was confined or  
15 committed, shall register with the division within ten calendar days for  
16 purposes of verifying such violent felony offender's intended place of  
17 residence.

18 2. For a violent felony offender required to register under this arti-  
19 cle on each anniversary of the violent felony offender's initial regis-  
20 tration date during the period on which he or she is required to regis-  
21 ter under this section the following applies:

22 (a) The violent felony offender shall mail the verification form to  
23 the division within ten calendar days after receipt of the form.

24 (b) The verification form shall be signed by the violent felony offen-  
25 der, and state that he or she still resides at the address last reported  
26 to the division.

27 (c) If the violent felony offender fails to mail the verification form  
28 to the division within ten calendar days after receipt of the form, he  
29 or she shall be in violation of this section.

30 3. The provisions of subdivision two of this section shall be applied  
31 to a violent felony offender required to register under this article  
32 except that such violent felony offender designated as a violent preda-  
33 tor must personally verify with the local law enforcement agency, the  
34 registration every ninety calendar days after the date of the initial  
35 release or commencement of parole.

36 4. Any violent felony offender shall register with the division within  
37 ten calendar days prior to any change of address. The division shall, if  
38 the violent felony offender changes residence to another state, notify  
39 the appropriate state law enforcement agency with which the violent  
40 felony offender must register in the new state. If any person required  
41 to register as provided in this article changes the address of his or  
42 her residence, the violent felony offender shall within ten calendar  
43 days, inform in writing the law enforcement agency where last registered  
44 of the new address. The law enforcement agency shall, within three  
45 calendar days of receipt of the new address, forward this information to  
46 the division and to the law enforcement agency having jurisdiction in  
47 the new place of residence.

48 5. The duty to register under the provisions of this article shall not  
49 be applicable to any violent felony offender whose conviction was  
50 reversed upon appeal or who was pardoned by the governor.

51 § 167-a. Prior convictions; duty to inform and register. 1. It shall  
52 be the duty of the sentencing court applying the guidelines established  
53 in subdivision five of section one hundred sixty-seven-f of this article  
54 to determine the duration of registration pursuant to section one  
55 hundred sixty-seven-b of this article and notification pursuant to  
56 subdivision six of section one hundred sixty-seven-f of this article and

1 notification for every violent felony offender who on the effective date  
2 of this article is then on parole or probation for committing a violent  
3 felony offense or a class A offense defined in the penal law except for  
4 a class A offense defined in article two hundred twenty of the penal  
5 law.

6 2. Every violent felony offender who on the effective date of this  
7 article is then on parole or probation for a violent felony offense  
8 shall within ten calendar days of such determination register with his  
9 or her parole or probation officer. On each anniversary of the violent  
10 felony offender's initial registration date thereafter, the provisions  
11 of section one hundred sixty-seven of this article shall apply. Any  
12 violent felony offender who fails or refuses to so comply shall be  
13 subject to the same penalties as otherwise provided for in this article  
14 which would be imposed upon a violent felony offender who fails or  
15 refuses to so comply with the provisions of this article on or after  
16 such effective date.

17 3. It shall be the duty of the parole or probation officer to inform  
18 and register such violent felony offender according to the requirements  
19 imposed by this article. A parole or probation officer shall give one  
20 copy of the form to the violent felony offender and shall, within three  
21 calendar days, send two copies electronically or otherwise to the divi-  
22 sion which shall forward one copy electronically or otherwise to the law  
23 enforcement agency having jurisdiction where the violent felony offender  
24 resides upon his or her parole, probation, or upon any form of state or  
25 local conditional release.

26 4. A petition for relief from this section is permitted to any violent  
27 felony offender required to register while released on parole or  
28 probation pursuant to section one hundred sixty-seven-i of this article.

29 § 167-b. Duration of registration. The duration of registration for a  
30 violent felony offender shall be annually for a period of ten years from  
31 the initial date of registration, provided, however, that for a violent  
32 predator, shall annually register and verify quarterly for a minimum of  
33 ten years unless the court determines in accordance with section one  
34 hundred sixty-seven-i of this article, that the person no longer suffers  
35 from a mental abnormality that would make him or her likely to engage in  
36 a predatory violent offense.

37 § 167-c. Registration requirements. Registration as required by this  
38 article shall consist of a statement in writing signed by the violent  
39 felony offender giving the information that is required by the division  
40 and the division shall enter the information into an appropriate elec-  
41 tronic database or file.

42 § 167-d. Notification of local law enforcement agencies of change of  
43 address. 1. Upon receipt of a change of address by a violent felony  
44 offender required to register under this article, the local law enforce-  
45 ment agency where the violent felony offender last registered shall  
46 within three calendar days of receipt of the new address, forward this  
47 information to the division and to the local law enforcement agency  
48 having jurisdiction of the new place of residence.

49 2. A change of address by a violent felony offender required to regis-  
50 ter under this article shall be immediately reported by the division to  
51 the appropriate law enforcement agency having jurisdiction where the  
52 violent felony offender is residing.

53 3. Upon receipt of change of address information, the local law  
54 enforcement agency having jurisdiction of the new place of residence  
55 shall adhere to the notification provisions set forth in subdivision six  
56 of section one hundred sixty-seven-f of this article.

1 § 167-e. Registration for change of address from another state. 1. A  
2 violent felony offender who has been convicted of an offense which  
3 requires registration under section one hundred sixty-seven-c of this  
4 article shall register the new address with the division no later than  
5 ten calendar days after such violent felony offender establishes resi-  
6 dence in this state. The division shall coordinate with the designated  
7 law enforcement agency of the state of which the individual departed on  
8 information relevant to the duration of registration.

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



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

52 3. If an offender, having been given notice, including the time and  
53 place of the determination proceeding in accordance with this section,  
54 fails to appear at this proceeding, without sufficient excuse, the court  
55 shall conduct the hearing and make the determinations in the manner set  
56 forth in subdivision two of this section.

1 § 167-f. Board of examiners of violent felony offenders. 1. There  
2 shall be a board of examiners of violent felony offenders which shall  
3 possess the powers and duties specified in this section. Such board  
4 shall consist of five members of the department who shall be appointed  
5 by the governor, three of whom shall be experts in the field of the  
6 behavior and treatment of violent felony offenders. The term of office  
7 of each member of such board shall be for six years; provided, however,  
8 that any member chosen to fill a vacancy occurring otherwise than by  
9 expiration of term shall be appointed for the remainder of the unexpired  
10 term of the member whom he or she is to succeed. In the event of the  
11 inability to act of any member, the governor may appoint some competent  
12 informed person to act in his or her stead during the continuance of  
13 such disability.

14 2. The governor shall designate one of the members of the board as  
15 chairman to serve in such capacity at the pleasure of the governor or  
16 until the member's term of office expires and a successor is designated  
17 in accordance with law, whichever first occurs.

18 3. Any member of the board may be removed by the governor for cause  
19 after an opportunity to be heard.

20 4. Except as otherwise provided by law, a majority of the board shall  
21 constitute a quorum for the transaction of all business of the board.

22 5. The board shall develop guidelines and procedures to assess the  
23 risk of a repeat offense by such violent felony offender and the threat  
24 posed to the public safety. Such guidelines shall be based upon, but not  
25 limited to, the following:

26 (a) criminal history factors indicative of high risk of repeat  
27 offense, including: (i) whether the violent felony offender has a mental  
28 abnormality;

29 (ii) whether the violent felony offender's conduct was found to be  
30 characterized by repetitive and compulsive behavior, associated with  
31 drugs or alcohol;

32 (iii) whether the violent felony offender served the maximum term;

33 (iv) whether the violent felony offender committed the violent felony  
34 offense against a child;

35 (v) the age of the violent felony offender at the time of the commis-  
36 sion of the first violent offense;

37 (b) other criminal history factors to be considered in determining  
38 risk, including:

39 (i) the relationship between such violent felony offender and the  
40 victim;

41 (ii) whether the offense involved the use of a weapon, violence or  
42 infliction of serious bodily injury;

43 (iii) the number, date and nature of prior offenses;

44 (c) conditions of release that minimize risk of re-offense, including  
45 but not limited to whether the violent felony offender is under super-  
46 vision; receiving counseling, therapy or treatment; or residing in a  
47 home situation that provides guidance and supervision;

48 (d) physical conditions that minimize risk of re-offense, including  
49 but not limited to advanced age or debilitating illness;

50 (e) whether psychological or psychiatric profiles indicate a risk of  
51 recidivism;

52 (f) the violent felony offender's response to treatment;

53 (g) recent behavior, including behavior while confined;

54 (h) recent threats or gestures against persons or expressions of  
55 intent to commit additional offenses; and

56 (i) review of any victim impact statement.

1 6. Applying these guidelines, the board shall within sixty calendar  
2 days prior to the discharge, parole or release of a violent felony  
3 offender make a recommendation which shall be confidential and shall not  
4 be available for public inspection, to the sentencing court as to wheth-  
5 er such violent felony offender warrants the designation of violent  
6 predator. In addition, the guidelines shall be applied by the board to  
7 make a recommendation to the sentencing court, providing for one of the  
8 following three levels of notification notwithstanding any other  
9 provision of law depending upon the degree of the risk of re-offense by  
10 the violent felony offender.

11 (a) If the risk of repeat offense is low, a level one designation  
12 shall be given to such violent felony offender. In such case the law  
13 enforcement agency having jurisdiction and the law enforcement agency  
14 having had jurisdiction at the time of his or her conviction shall be  
15 notified pursuant to this article.

16 (b) If the risk of repeat offense is moderate, a level two designation  
17 shall be given to such violent felony offender. In such case the law  
18 enforcement agency having jurisdiction and the law enforcement agency  
19 having had jurisdiction at the time of his or her conviction shall be  
20 notified and may disseminate relevant information which may include  
21 approximate address based on violent felony offender's zip code, a  
22 photograph of the offender, background information including the  
23 offender's crime of conviction, modus of operation, type of victim  
24 targeted and the description of special conditions imposed on the offen-  
25 der to any entity with vulnerable populations related to the nature of  
26 the offense committed by such violent felony offender. Any entity  
27 receiving information on a violent felony offender may disclose or  
28 further disseminate such information at their discretion.

29 (c) If the risk of repeat offense is high and there exists a threat to  
30 the public safety, such violent felony offender shall be deemed a  
31 "violent predator" and a level three designation shall be given to such  
32 violent felony offender. In such case, the law enforcement agency having  
33 jurisdiction and the law enforcement agency having had jurisdiction at  
34 the time of his or her conviction shall be notified and may disseminate  
35 relevant information which may include the violent felony offender's  
36 exact address, a photograph of the offender, background information  
37 including the offender's crime of conviction, modus of operation, type  
38 of victim targeted, and the description of special conditions imposed on  
39 the offender to any entity with vulnerable populations related to the  
40 nature of the offense committed by such violent felony offenders.

41 Any entity receiving information on a violent felony offender may  
42 disclose or further disseminate such information at their discretion. In  
43 addition, in such case, the information described in this section shall  
44 also be provided in the subdirectory established in this article and  
45 notwithstanding any other provision of law, such information shall, upon  
46 request, be made available to the public.

47 7. Upon request by the court, pursuant to section one hundred sixty-  
48 seven-i of this article, the board shall provide an updated report  
49 pertaining to the violent felony offender petitioning relief of duty to  
50 register.

51 § 167-g. Review. Notwithstanding any other provision of law to the  
52 contrary, any state or local correctional facility, hospital or institu-  
53 tion shall forward relevant information pertaining to a violent felony  
54 offender to be discharged, paroled or released to the board for review  
55 no later than one hundred twenty days prior to the release or discharge  
56 and the board shall make recommendations as provided in subdivision six

1 of section one hundred sixty-seven-f of this article within sixty days  
2 of receipt of the information. Information may include but may not be  
3 limited to the commitment file, medical file and treatment file pertain-  
4 ing to such person. Such person shall be permitted to submit to the  
5 board any information relevant to the review.

6 § 167-h. Judicial determination. 1. A determination that an offender  
7 is a violent felony offender or a violent predator shall be made prior  
8 to the discharge, parole or release of such offender by the sentencing  
9 court after receiving a recommendation from the board pursuant to  
10 section one hundred sixty-seven-f of this article.

11 2. In addition, the sentencing court shall also make a determination  
12 with respect to the level of notification, after receiving a recommenda-  
13 tion from the board pursuant to section one hundred sixty-seven-f of  
14 this article. Both determinations of the sentencing court shall be made  
15 thirty calendar days prior to discharge, parole or release.

16 3. In making the determination, the court shall review any victim's  
17 statement and any materials submitted by the violent felony offender.  
18 The court shall also allow the violent felony offender to appear and be  
19 heard, and inform the violent felony offender of his or her right to  
20 have counsel appointed, if necessary.

21 4. Upon determination that the risk of repeat offense and threat to  
22 public safety is high, the sentencing court shall also notify the divi-  
23 sion of such fact for the purposes of section one hundred sixty-seven-k  
24 of this article.

25 5. Upon the reversal of a conviction of the violent felony offense,  
26 the court shall order the expungement of any records required to be kept  
27 pursuant to this section.

28 § 167-i. Petition for relief. Any violent felony offender required to  
29 register pursuant to this article may be relieved of any further duty to  
30 register upon the granting of a petition for relief by the sentencing  
31 court. Upon receipt of the petition for relief, the court shall notify  
32 the board and request an updated report pertaining to the violent felony  
33 offender. After receiving the report from the board, the court may grant  
34 or deny the relief sought. The court may consult with the victim prior  
35 to making a determination on the petition. Such petition, if granted,  
36 shall not relieve the petitioner of the duty to register pursuant to  
37 this article upon conviction of any offense requiring registration in  
38 the future.

39 § 167-j. Special telephone number. 1. Pursuant to section one hundred  
40 sixty-three of this article, the division shall also operate a telephone  
41 number that members of the public may call and inquire whether a named  
42 individual required to register pursuant to this article is listed. The  
43 division shall ascertain whether a named person reasonably appears to be  
44 a person so listed and provide the caller with the relevant information  
45 according to risk as described in subdivision six of section one hundred  
46 sixty-seven-f of this article. The division shall decide whether the  
47 named person reasonably appears to be a person listed, based upon infor-  
48 mation from the caller providing information that shall include (a) an  
49 exact street address, including apartment number, driver's license  
50 number or birth date, along with additional information that may include  
51 social security number, hair color, eye color, height, weight, distinc-  
52 tive markings, ethnicity; or (b) any combination of the above listed  
53 characteristics if an exact birth date or address is not available. If  
54 three of the characteristics provided include ethnicity, hair color, and  
55 eye color, other identifying characteristics shall be provided. Any  
56 information identifying the victim by name, birth date, address or

1 relation to the person listed by the division shall be excluded by the  
2 division.

3 2. Whenever there is reasonable cause to believe that any person or  
4 group of persons is engaged in a pattern or practice of misuse of the  
5 telephone number, the attorney general, any district attorney or any  
6 person aggrieved by the misuse of the number is authorized to bring a  
7 civil action in the appropriate court requesting preventive relief,  
8 including an application for a permanent or temporary injunction,  
9 restraining order or other order against the person or group of persons  
10 responsible for the pattern or practice of misuse. The foregoing reme-  
11 dies shall be independent of any other remedies or procedures that may  
12 be available to an aggrieved party under other provisions of law. Such  
13 person or group of persons shall be subject to a fine of not less than  
14 five hundred dollars and not more than one thousand dollars.

15 3. The division shall submit to the legislature an annual report on  
16 the operation of the telephone number. The annual report shall include,  
17 but not be limited to, all of the following:

18 (a) number of calls received;

19 (b) a detailed outline of the amount of money expended and the manner  
20 in which it was expended for purposes of this section;

21 (c) number of calls that resulted in an affirmative response and the  
22 number of calls that resulted in a negative response with regard to  
23 whether a named individual was listed;

24 (d) number of persons listed; and

25 (e) a summary of the success of the telephone number program based  
26 upon selected factors.

27 § 167-k. Violent predator subdirectory. 1. The division shall maintain  
28 a subdirectory of violent predators. The subdirectory shall include the  
29 exact address and photograph of the violent felony offender along with  
30 the following information, if available: name, physical description, age  
31 and distinctive markings. Background information including the violent  
32 felony offender's crime of conviction, modus of operation, type of  
33 victim targeted, and a description of special conditions imposed on the  
34 violent felony offender shall also be included. The subdirectory shall  
35 have violent felony offender listings categorized by county and zip  
36 code. A copy of the subdirectory shall annually be distributed to the  
37 offices of local village, town or city police departments for purposes  
38 of public access. Such departments shall require that a person in writ-  
39 ing express a purpose in order to have access to the subdirectory and  
40 such department shall maintain these requests. Any information identify-  
41 ing the victim by name, birth date, address or relation to the violent  
42 felony offender shall be excluded from the subdirectory distributed for  
43 purposes of public access. The subdirectory provided for in this section  
44 shall be updated periodically to maintain its efficiency and usefulness  
45 and may be computer accessible.

46 2. Any person who uses information disclosed pursuant to this section  
47 in violation of the law shall in addition to any other penalty or fine  
48 imposed, be subject to a fine of not less than five hundred dollars and  
49 not more than one thousand dollars. Unauthorized removal or duplication  
50 of the subdirectory from the offices of local, village or city police  
51 department shall be punishable by a fine not to exceed one thousand  
52 dollars. In addition, the attorney general, any district attorney, or  
53 any person aggrieved is authorized to bring a civil action in the appro-  
54 priate court requesting preventive relief, including an application for  
55 a permanent or temporary injunction, restraining order, or other order  
56 against the person or group of persons responsible for such action. The

1 foregoing remedies shall be independent of any other remedies or proce-  
2 dures that may be available to an aggrieved party under other provisions  
3 of law.

4 § 167-l. Immunity from liability. 1. No official, employee or agency,  
5 whether public or private, shall be subject to any civil or criminal  
6 liability for damages for any discretionary decision to release relevant  
7 and necessary information pursuant to this section, provided that it is  
8 shown that such official, employee or agency acted reasonably and in  
9 good faith. The immunity provided under this section applies to the  
10 release of relevant information to other employees or officials or to  
11 the general public.

12 2. Nothing in this section shall be deemed to impose any civil or  
13 criminal liability upon or to give rise to a cause of action against any  
14 official, employee or agency, whether public or private, for failing to  
15 release information as authorized in this section provided that it is  
16 shown that such official, employee or agency acted reasonably and in  
17 good faith.

18 § 167-m. Annual report. The division shall on or before February first  
19 in each year file a report with the governor, and the legislature  
20 detailing the program, compliance with provisions of this article and  
21 effectiveness of the provisions of this article, together with any  
22 recommendations to further enhance the intent of this article.

23 § 167-n. Failure to register; penalty. Any person required to register  
24 pursuant to the provisions of this article who fails to register in the  
25 manner and within the time periods provided for in this article shall be  
26 guilty of a class E felony for the first offense, and for a second or  
27 subsequent offense shall be guilty of a class D felony respectively in  
28 accordance with sections 195.03 and 195.04 of the penal law. Any such  
29 failure to register may also be the basis for revocation of parole  
30 pursuant to section two hundred fifty-nine-i of the executive law which  
31 shall be in addition to any other penalties provided by law.

32 § 167-o. Unauthorized release of information. The unauthorized release  
33 of any information required by this article shall be a class B misdemea-  
34 nor.

35 § 167-p. Severability. If any clause, sentence, paragraph, section or  
36 part of this act shall be adjudged by any court of competent jurisdic-  
37 tion to be invalid and after exhaustion of all further judicial review,  
38 the judgment shall not affect, impair or invalidate the remainder there-  
39 of, but shall be confined in its operation to the clause, sentence,  
40 paragraph, section or part of this act directly involved in the contro-  
41 versy in which the judgment shall have been rendered.

42 § 167-q. Subdirectory; internet posting. 1. The division shall main-  
43 tain a subdirectory of level two and three violent felony offenders. The  
44 subdirectory shall include the exact address, address of the offender's  
45 place of employment and photograph of the violent felony offender along  
46 with the following information, if available: name, physical  
47 description, age and distinctive markings. Background information  
48 including the violent felony offender's crime of conviction, modus of  
49 operation, type of victim targeted, the name and address of any institu-  
50 tion of higher education at which the violent felony offender is  
51 enrolled, attends, is employed or resides and a description of special  
52 conditions imposed on the violent felony offender shall also be  
53 included. The subdirectory shall have violent felony offender listings  
54 categorized by county and zip code. A copy of the subdirectory shall  
55 annually be distributed to the offices of local village, town, city,  
56 county or state law enforcement agencies for purposes of public access.

1 The division shall distribute monthly updates to the offices of local  
2 village, town, city, county or state law enforcement agencies for  
3 purposes of public access. Such departments shall require that a person  
4 in writing provide their name and address prior to viewing the subdirec-  
5 tory. Any information identifying the victim by name, birth date,  
6 address or relation to the violent felony offender shall be excluded  
7 from the subdirectory distributed for purposes of public access. The  
8 subdirectory provided for herein shall be updated monthly to maintain  
9 its efficiency and usefulness and shall be computer accessible. Such  
10 subdirectory shall be made available at all times on the internet via  
11 the division homepage. Any person may apply to the division to receive  
12 automated e-mail notifications whenever a new or updated subdirectory  
13 registration occurs in a geographic area specified by such person. The  
14 division shall furnish such service at no charge to such person, who  
15 shall request e-mail notification by county and/or zip code on forms  
16 developed and provided by the division. E-mail notification is limited  
17 to three geographic areas per e-mail account.

18 2. Any person who uses information disclosed pursuant to this section  
19 in violation of the law shall in addition to any other penalty or fine  
20 imposed, be subject to a fine of not less than five hundred dollars and  
21 not more than one thousand dollars. Unauthorized removal or duplication  
22 of the subdirectory from the offices of local, village or city police  
23 department shall be punishable by a fine not to exceed one thousand  
24 dollars. In addition, the attorney general, any district attorney, or  
25 any person aggrieved is authorized to bring a civil action in the appro-  
26 priate court requesting preventive relief, including an application for  
27 a permanent or temporary injunction, restraining order, or other order  
28 against the person or group of persons responsible for such action. The  
29 foregoing remedies shall be independent of any other remedies or proce-  
30 dures that may be available to an aggrieved party under other provisions  
31 of law.

32 § 4. This act shall take effect on the one hundred eightieth day after  
33 it shall have become a law; provided, however, that effective immediate-  
34 ly, the addition, amendment and/or repeal of any rule or regulation  
35 necessary for the implementation of this act on its effective date are  
36 authorized and directed to be made and completed on or before such  
37 effective date.