

STATE OF NEW YORK

6548

2017-2018 Regular Sessions

IN SENATE

June 1, 2017

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

AN ACT to amend the correction law, in relation to dissemination of information on sex offenders from another state who have not been assigned a risk level in this state

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

1 Section 1. Subdivision 2 of section 168-k of the correction law, as
2 amended by chapter 684 of the laws of 2005, is amended to read as
3 follows:
4 2. The division shall advise the board that the sex offender has
5 established residence in this state. The board shall determine whether
6 the sex offender is required to register with the division. If it is
7 determined that the sex offender is required to register, the division
8 shall notify the sex offender of his or her duty to register under this
9 article and shall require the sex offender to sign a form as may be
10 required by the division acknowledging that the duty to register and the
11 procedure for registration has been explained to the sex offender. The
12 division shall obtain on such form the address where the sex offender
13 expects to reside within the state and the sex offender shall retain one
14 copy of the form and send two copies to the division which shall provide
15 the information to the law enforcement agency having jurisdiction where
16 the sex offender expects to reside within this state. If the sex offen-
17 der has not been given a risk level designation in this state, for
18 purposes of disseminating relevant information and until such time as
19 the sex offender has received a risk level designation in accordance
20 with this section, the law enforcement agency having jurisdiction and
21 the division may disseminate relevant information in accordance with the
22 provisions of paragraph (b) of subdivision six of section one hundred
23 sixty-eight-1, section one hundred sixty-eight-p and subdivision one of

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

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

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

43 § 2. This act shall take effect immediately.