STATE OF NEW YORK

1187

2017-2018 Regular Sessions

IN ASSEMBLY

January 11, 2017

Introduced by M. of A. SIMANOWITZ -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the criminal procedure law, in relation to the use of youthful offender adjudications in making recommendations for the supervision of sex offenders

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

Section 1. Subdivision 5 of section 168-l of the correction law, as added by chapter 192 of the laws of 1995 and subparagraph (i) of paragraph (a) as amended by chapter 11 of the laws of 2002, is amended to read as follows:

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

(a) criminal history factors indicative of high risk of repeat offense, including:

(i) whether the sex offender has a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses;

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

(iii) whether the sex offender served the maximum term;

(iv) whether the sex offender committed the felony sex offense against a child;

(v) the age of the sex offender at the time of the commission of the first sex offense;

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

(i) the relationship between such sex offender and the victim;

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

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

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

(c) youthful offender adjudication records;

[~~(c)~~] **(d)** conditions of release that minimize risk [~~or~~] **of** re-offense, including but not limited to whether the sex offender is under supervision; receiving counseling, therapy or treatment; or residing in a home situation that provides guidance and supervision;

[~~(d)~~] **(e)** physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness;

[~~(e)~~] **(f)** whether psychological or psychiatric profiles indicate a risk of recidivism;

[~~(f)~~] **(g)** the sex offender's response to treatment;

[~~(g)~~] **(h)** recent behavior, including behavior while confined;

[~~(h)~~] **(i)** recent threats or gestures against persons or expressions of intent to commit additional offenses; and

[~~(i)~~] **(j)** review of any victim impact statement.

§ 2. Subdivision 1 of section 720.35 of the criminal procedure law, as amended by chapter 402 of the laws of 2014, is amended and a new subdivision 5 is added to read as follows:

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred [~~fifty-nine-m~~] **fifty-nine-mm** of the executive law. A defendant for whom a youthful offender adjudication was substituted, who was originally charged with prostitution as defined in section 230.00 of the penal law or loitering for the purposes of prostitution as defined in subdivision two of section 240.37 of the penal law provided that the person does not stand charged with loitering for the purpose of patronizing a prostitute, for an offense allegedly committed when he or she was sixteen or seventeen years of age, shall be deemed a "sexually exploited child" as defined in subdivision one of section four hundred forty-seven-a of the social services law and therefore shall not be considered an adult for purposes related to the charges in the youthful offender proceeding or a proceeding under section 170.80 of this chapter.

5. Notwithstanding subdivision two of this section, whenever a person is adjudicated a youthful offender, all records pertaining to the youthful offender adjudication shall be included in those records and reports that may be obtained and utilized by the board of examiners of sex offenders in assessing an offender's risk of a repeat offense, as provided by section one hundred sixty-eight-l of the correction law.

§ 3. This act shall take effect immediately.