

# STATE OF NEW YORK

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1233

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

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Introduced by M. of A. M. G. MILLER -- read once and referred to the  
Committee on 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 Assem-  
bly, 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-l, section one hundred sixty-eight-p and subdivision one of  
24 section one hundred sixty-eight-q of this article. When the sex offender

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

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has been assigned a risk level in accordance with this section, dissemination of relevant information for that risk level shall thereafter be made by the law enforcement agency having jurisdiction and the division shall be made as provided in this article.

No later than thirty days prior to the board making a recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the

board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. It shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any material submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. If available, facts proven at trial or elicited at the time of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party 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.

§ 2. This act shall take effect immediately.