STATE OF NEW YORK

6827

2019-2020 Regular Sessions

IN ASSEMBLY

March 20, 2019

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

AN ACT to amend the correction law, in relation to establishing the "domestic violence registration act"

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

Section 1. This act shall be known and may be cited as the "domestic violence registration act".

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

ARTICLE 6-B

DOMESTIC VIOLENCE REGISTRATION ACT

Section 165. Definitions.

165-a. Duties of the division; registration information.

165-b. Domestic violence offender; relocation; notification.

165-c. Duties of the court.

165-d. Discharge of domestic violence offender from correctional facility; duties of official in charge.

165-e. Duty to register and to verify.

165-f. Prior convictions; duty to inform and register.

165-g. Duration of registration and verification.

165-h. Registration and verification requirements.

165-i. Notification of local law enforcement agencies of change of address.

165-j. Registration for change of address from another state.

165-k. Special telephone number.

165-l. Immunity from liability.

165-m. Annual report.

165-n. Penalty.

165-o. Unauthorized release of information.

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

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§ 165. Definitions. As used in this article, the following definitions apply:

1. "Domestic violence offender" includes any person who is convicted of any of the domestic violence offenses set forth in subdivision two of this section. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this article.

2. "Domestic violence offense" means the conviction of any felony offense defined in the penal law when the victim of such crime or offense is a family or household member.

3. "Family or household members" means the following individuals:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; or

(e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household.

4. "Parent" means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

5. "Division" means the division of criminal justice services as defined by section eight hundred thirty-five of the executive law.

6. "Law enforcement agency having jurisdiction" means:

(a) (i) the chief law enforcement officer in the village, town or city in which the offender expects to reside upon his or her discharge, probation, parole, release to post-release supervision or upon any form of state or local conditional release; or

(ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which the offender expects to reside; or

(iii) if there be no chief enforcement officer in such village, town, city or county, the division of state police; and

(b) in the case of a domestic violence offender who is or expects to be employed by, enrolled in, attending or employed, whether for compensation or not, at an institution of higher education, (i) the chief law enforcement officer in the village, town or city in which such institution is located; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which such institution is located; or (iii) if there be no chief law enforcement officer in such village, town, city or county, the division of state police; and (iv) if such institution operates or employs a campus law enforcement or security agency, the chief of such agency; and

(c) in the case of a domestic violence offender who expects to reside within a state park or on other land under the jurisdiction of the office of parks, recreation and historic preservation, the state regional park police.

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

(a) The domestic violence offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, driver's license number, home address and/or expected place of domicile, any internet accounts with internet access providers belonging to such offender and internet identifiers that such offender uses.

(b) A photograph and set of fingerprints. The division shall, during the period of registration, update such photograph once every three years. The division shall notify the domestic violence offender by mail of the duty to appear and be photographed at the specified law enforcement agency having jurisdiction. Such notification shall be mailed at least thirty days and not more than sixty days before the photograph is required to be taken pursuant to this article.

(c) A description of the offense for which the domestic violence offender was convicted, the date of conviction and the sentence imposed.

(d) The name and address of any institution of higher education at which the domestic violence offender is or expects to be enrolled, attending or employed, whether for compensation or not, and whether such offender resides in or will reside in a facility owned or operated by such institution.

(e) The employment address and/or expected place of employment of the domestic violence offender.

(f) Any other information deemed pertinent by the division.

2. (a) The division is authorized to make the registry available to any regional or national registry of domestic violence offenders for the purpose of sharing information. The division shall accept files from any regional or national registry of domestic violence offenders and shall make such files available when requested pursuant to the provisions of this article.

(b) No official, agency, authorized person or entity, whether public or private, shall be subject to any civil or criminal liability for damages for any decision or action made in the ordinary course of business of that official, agency, authorized person or entity pursuant to this article, provided that such official, agency, authorized person or entity acted reasonably and in good faith with respect to such registry information.

(c) The division shall require that no information included in the registry shall be made available except in the furtherance of the provisions of this article.

3. The division shall develop a standardized registration form to be made available to the appropriate authorities and promulgate rules and regulations to implement the provisions of this section. Such form shall be written in clear and concise language and shall advise the domestic violence offender of his or her duties and obligations under this article.

4. The division shall mail a nonforwardable verification form to the last reported address of the domestic violence offender for annual verification requirements.

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

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

7. The division shall charge a fee of ten dollars each time a domestic violence offender registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education as required by this article. The fee shall be paid to the division by the domestic violence offender. The

state comptroller is hereby authorized to deposit such fees into the domestic violence awareness fund established pursuant to section ninety-seven-yyy of the state finance law as added by chapter six hundred thirty-four of the laws of two thousand two.

8. The division shall, upon the request of any children's camp operator, release to such person any information in the registry relating to a prospective employee of any such person or entity in accordance with the provisions of this article. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry to such persons.

9. The division shall, upon the request of any authorized internet entity, release to such entity internet identifiers that would enable such entity to prescreen or remove domestic violence offenders from its services or, in conformity with state and federal law, advise law enforcement and/or other governmental entities of potential violations of law and/or threats to public safety. Before releasing any information the division shall require an authorized internet entity that requests information from the registry to submit to the division the name, address and telephone number of such entity and the specific legal nature and corporate status of such entity. Except for the purposes specified in this subdivision, an authorized internet entity shall not publish or in any way disclose or redisclose any information provided to it by the division pursuant to this subdivision. The division may charge an authorized internet entity a fee for access to registered internet identifiers requested by such entity pursuant to this subdivision. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry, including but not limited to, the disclosure and redisclosure of such information, and the imposition of any fees.

§ 165-b. Domestic violence offender; relocation; notification. 1. In the case of any domestic violence offender, it shall be the duty of the department, hospital or local correctional facility at least ten calendar days prior to the release or discharge of any domestic violence offender from a correctional facility, hospital or local correctional facility to notify the division of the contemplated release or discharge of such domestic violence offender, informing the division in writing on a form provided by the division indicating the address at which he or she proposes to reside and the name and address of any institution of higher education at which he or she expects to be enrolled, attending or employed, whether for compensation or not, and whether he or she resides in or will reside in a facility owned or operated by such institution. If such domestic violence offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the domestic violence offender's parole officer within forty-eight hours to the division on a form provided by the division. If such domestic violence offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on parole, such notification of the change of status shall be sent by the domestic violence offender's parole officer within forty-eight hours to the division on a form provided by the division.

2. In the case of any domestic violence offender on probation, it shall be the duty of the domestic violence offender's probation officer to notify the division within forty-eight hours of the new place of residence on a form provided by the division. If such domestic violence offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on

probation, such notification of the change of status shall be sent by the domestic violence offender's probation officer within forty-eight hours to the division on a form provided by the division.

3. In the case in which any domestic violence offender escapes from a state or local correctional facility or hospital, the designated official of the facility or hospital where the person was confined shall notify within twenty-four hours the law enforcement agency having had jurisdiction at the time of his or her conviction, informing such law enforcement agency of the name and aliases of the person, and the address at which he or she resided at the time of his or her conviction, the amount of time remaining to be served, if any, on the full term for which he or she was sentenced, and the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such domestic violence offender's fingerprints and photograph and a summary of his or her criminal record.

4. The division shall provide general information, in registration materials and annual correspondence, to registrants concerning notification and registration procedures that may apply if the registrant is authorized to relocate and relocates to another state or United States possession, or commences employment or attendance at an education institution in another state or United States possession. Such information shall include addresses and telephone numbers for relevant agencies from which additional information may be obtained.

§ 165-c. Duties of the court. 1. Upon conviction of any of the offenses set forth in subdivision two of section one hundred sixty-five of this article the court shall certify that the person is a domestic violence offender and shall include the certification in the order of commitment, if any, and judgment of conviction. The court shall also advise the domestic violence offender of his or her duties under this article. Failure to include the certification in the order of commitment or the judgment of conviction shall not relieve a domestic violence offender of the obligations imposed by this article.

2. Any domestic violence offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such domestic violence offender shall register with the division on a form prepared by the division. The court shall require the domestic violence offender to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the domestic violence offender expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The court shall give one copy of the form to the domestic violence offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. Where the court orders a domestic violence offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such domestic violence offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

§ 165-d. Discharge of domestic violence offender from correctional facility; duties of official in charge. Any domestic violence offender, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the domestic violence offender to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the domestic violence offender expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The facility shall give one copy of the form to the domestic violence offender, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the domestic violence offender a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the domestic violence offender and sent to the division by the facility at least ten days prior to the domestic violence offender's release or discharge.

§ 165-e. Duty to register and to verify. 1. Any domestic violence offender shall, (a) at least ten calendar days prior to discharge, parole, release to post-release supervision or release from any state or local correctional facility, hospital or institution where he or she was confined or committed, or, (b) at the time sentence is imposed for any domestic violence offender released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, register with the division on a form prepared by the division.

2. For a domestic violence offender required to register under this article on each anniversary of the domestic violence offender's initial registration date during the period in which he or she is required to register under this section the following applies:

(a) The domestic violence offender shall mail the verification form to the division within ten calendar days after receipt of the form.

(b) The verification form shall be signed by the domestic violence offender, and state that he or she still resides at the address last reported to the division.

(c) If the domestic violence offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section unless he or she proves that he or she has not changed his or her residence address.

(d) If the domestic violence offender, to whom a notice has been mailed at the last reported address pursuant to this article, fails to personally appear at the law enforcement agency having jurisdiction, within twenty days of the anniversary of the domestic violence offender's initial registration, or an alternate later date scheduled by the law enforcement agency having jurisdiction, he or she shall be in violation of this section. The duty to personally appear for such updated photograph shall be temporarily suspended during any period in

which the domestic violence offender is confined in any hospital or institution, and such domestic violence offender shall personally appear for such updated photograph no later than ninety days after release from such hospital or institution, or an alternate later date scheduled by the law enforcement agency having jurisdiction.

3. Any domestic violence offender shall register with the division no later than ten calendar days after any change of address, internet accounts with internet access providers belonging to such offender, internet identifiers that such offender uses, or his or her status of enrollment, attendance, employment or residence at any institution of higher education. A fee of ten dollars, as authorized by subdivision seven of section one hundred sixty-five-a of this article, shall be submitted by the domestic violence offender each time such offender registers any change of address or any change of his or her status or enrollment, attendance, employment or residence at any institution of higher education. Any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status.

4. The duty to register under the provisions of this article shall not be applicable to any domestic violence offender whose conviction was reversed upon appeal or who was pardoned by the governor.

5. Any nonresident worker or nonresident student, as defined in subdivisions fourteen and fifteen of section one hundred sixty-eight-a of this chapter, shall register his or her current address and the address of his or her place of employment or educational institution attended with the division within ten calendar days after such nonresident worker or nonresident student commences employment or attendance at an educational institution in the state. Any nonresident worker or nonresident student shall notify the division of any change of residence, employment or educational institution address no later than ten days after such change. The division shall notify the law enforcement agency where the nonresident worker is employed or the educational institution is located that a nonresident worker or nonresident student is present in that agency's jurisdiction.

§ 165-f. Prior convictions; duty to inform and register. 1. The department of parole or office of probation and correctional alternatives in accordance with risk factors pursuant to this article shall determine the duration of registration and notification for every domestic violence offender who on the effective date of this article is then on parole or probation for an offense provided for in subdivision two of section one hundred sixty-five of this article.

2. Every domestic violence offender who on the effective date of this article is then on parole or probation for an offense provided for in subdivision two of section one hundred sixty-five of this article shall within ten calendar days of such determination register with his or her parole or probation officer. On each anniversary of the domestic violence offender's initial registration date thereafter, the provisions of section one hundred sixty-five-e of this article shall apply. Any domestic violence offender who fails or refuses to so comply shall be subject to the same penalties as otherwise provided for in this article which would be imposed upon a domestic violence offender who fails or refuses to so comply with the provisions of this article on or after such effective date.

3. It shall be the duty of the parole or probation officer to inform and register such domestic violence offender according to the requirements imposed by this article. A parole or probation officer shall give

one copy of the form to the domestic violence offender and shall, within three calendar days, send two copies electronically or otherwise to the division which shall forward one copy electronically or otherwise to the law enforcement agency having jurisdiction where the domestic violence offender resides upon his or her parole, probation, or upon any form of state or local conditional release.

4. A petition for relief from this section is permitted to any domestic violence offender required to register while released on parole or probation pursuant to section one hundred sixty-five-n of this article.

§ 165-g. Duration of registration and verification. The duration of registration and verification for a domestic violence offender shall be annually for a period of twenty years from the initial date of registration.

§ 165-h. Registration and verification requirements. Registration and verification as required by this article shall consist of a statement in writing signed by the domestic violence offender giving the information that is required by the division and the division shall enter the information into an appropriate electronic data base or file.

§ 165-i. Notification of local law enforcement agencies of change of address. 1. Upon receipt of a change of address by a domestic violence offender required to register under this article, the division shall notify the local law enforcement agency having jurisdiction of the new place of residence and the local law enforcement agency where the domestic violence offender last resided of the new place of residence.

2. Upon receipt of change of address information, the local law enforcement agency having jurisdiction of the new place of residence shall adhere to the notification provisions set forth in this article.

3. The division shall, if the domestic violence offender changes residence to another state, notify the appropriate agency within that state of the new place of residence.

4. Upon receipt of a change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a domestic violence offender required to register under this article, the division shall notify each law enforcement agency having jurisdiction which is affected by such change.

5. Upon receipt of change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a domestic violence offender required to register under this article, each law enforcement agency having jurisdiction shall adhere to the notification provisions set forth in this article.

§ 165-j. Registration for change of address from another state. 1. A domestic violence offender who has been convicted of an offense which requires registration under this article shall notify the division of the new address no later than ten calendar days after such domestic violence offender establishes residence in this state.

2. If the division determines that the domestic violence offender is required to register, the division shall notify the domestic violence offender of his or her duty to register under this article and shall require the domestic violence offender to sign a form as may be required by the division acknowledging that the duty to register and the procedure for registration has been explained to the domestic violence offender. The division shall obtain on such form the address where the domestic violence offender expects to reside within the state and the domestic violence offender shall retain one copy of the form and send two copies to the division which shall provide the information to the

law enforcement agency having jurisdiction where the domestic violence offender expects to reside within this state.

3. The division shall undertake an information campaign designed to provide information to officials and appropriate individuals in other states and United States possessions concerning the notification procedures required by this article. Such information campaign shall be ongoing, and shall include, but not be limited to, letters, notice forms and similar materials providing relevant information about this article and the specific procedures required to effect notification. Such materials shall include an address and telephone number which such officials and individuals in other states and United States possessions may use to obtain additional information.

§ 165-k. Special telephone number. 1. Pursuant to section one hundred sixty-five-a of this article, the division shall also operate a telephone number that members of the public may call free of charge and inquire whether a named individual required to register pursuant to this article is listed. The division shall ascertain whether a named person reasonably appears to be a person so listed. The division shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (a) an exact street address, including apartment number, driver's license number or birth date, along with additional information that may include social security number, hair color, eye color, height, weight, distinctive markings, ethnicity; or (b) any combination of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, other identifying characteristics shall be provided. Any information identifying the victim by name, birth date, address or relation to the person listed by the division shall be excluded by the division.

2. When the telephone number is called, a preamble shall be played which shall provide the following information:

(a) notice that the caller's telephone number will be recorded;

(b) that there is no charge for use of the telephone number;

(c) notice that the caller is required to identify himself or herself to the operator and provide current address and shall be maintained in a written record;

(d) notice that the caller is required to be eighteen years of age or older;

(e) a warning that it is illegal to use information obtained through the telephone number to commit a crime against any person listed or to engage in illegal discrimination or harassment against such person;

(f) notice that the caller is required to have the birth date, driver's license or identification number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person;

(g) a statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities;

(h) a statement that an information package which will include a description of the law and domestic violence prevention materials is available upon request from the division. Such information package shall include questions and answers regarding the most commonly asked questions about the domestic violence offender registration act, and current domestic violence prevention material.

3. (a) The division shall establish a program allowing non-profit and not-for-profit youth services organizations to pre-register with the

division for use of the telephone number. Pre-registration shall include the identification of up to two officials of the organization who may call the telephone number and obtain information on behalf of the organization. A pre-registered certificate issued under this subdivision shall be valid for two years, unless earlier revoked by the division for good cause shown. No fee shall be charged to an applicant for the issuance of a pre-registered certificate pursuant to this subdivision.

(b) An organization granted a pre-registered certificate pursuant to this subdivision may, upon calling the telephone number, inquire whether multiple named individuals are listed on the domestic violence offender registry. Notwithstanding any per call limitation the division may place on calls by private individuals, the division shall allow such pre-registered organizations to inquire about up to twenty prospective coaches, leaders or volunteers in each call to the telephone number.

(c) For purposes of this subdivision, "youth services organization" shall mean a formalized program operated by a corporation pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law that functions primarily to: (i) provide children the opportunity to participate in adult-supervised sporting activities; or (ii) match children or groups of children with adult volunteers for the purpose of providing children with positive role models to enhance their development.

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

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

(a) number of calls received;

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

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

(d) number of persons listed; and

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

§ 165-l. Immunity from liability. 1. No official, employee or agency, whether public or private, shall be subject to any civil or criminal liability for damages for any discretionary decision to release relevant and necessary information pursuant to this section if that official, employee or agency acted reasonably and in good faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

2. Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against any official, employee or agency, whether public or private, for failing to

release information as authorized in this section if that official, employee or agency acted reasonably and in good faith.

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

§ 165-n. Penalty. Any domestic violence offender required to register or to verify pursuant to the provisions of this article who fails to register or verify in the manner and within the time periods provided for in this article shall be guilty of a class E felony upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any such failure to register or verify may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law or the basis for revocation of probation pursuant to article four hundred ten of the criminal procedure law.

§ 165-o. Unauthorized release of information. The unauthorized release of any information required by this article shall be a class B misdemeanor.

§ 3. If any clause, sentence, paragraph, 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, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect immediately.