

STATE OF NEW YORK

7958

2019-2020 Regular Sessions

IN ASSEMBLY

May 29, 2019

Introduced by M. of A. QUART -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to provisional determinations involving risk levels for certain sex offenders

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

1 Section 1. The correction law is amended by adding a new section 168-
2 nn to read as follows:

3 § 168-nn. Provisional sex offender risk level determinations. 1. In
4 any case where it is anticipated that a risk level will not be set by
5 the date of an inmate's scheduled discharge, parole or release, from a
6 correctional facility, local correctional facility or hospital, the
7 court may issue a provisional sex offender risk level determination. A
8 provisional sex offender risk level determination shall establish wheth-
9 er the offender is a sexual predator, sexually violent offender or pred-
10 icate sex offender as defined in subdivision seven of section one
11 hundred sixty-eight-a of this article. Such a determination shall also
12 establish whether the offender is designated a level one offender at low
13 risk to re-offend; a level two offender at moderate risk to re-offend or
14 a level three offender at high risk to re-offend.

15 2. With respect to whether an offender is designated as being at low,
16 moderate or high risk to re-offend, the court shall presumptively estab-
17 lish such risk level as: (i) the level agreed upon by the parties, if
18 the parties agree on a level, or (ii) if the parties do not agree on a
19 level, the level recommended by the board of examiners of sex offenders
20 based on the board's point score, without considering any recommended
21 departure by the board. The court may establish a provisional sex offen-
22 der risk level determination which differs from these presumptions if
23 the court deems that appropriate, after providing findings on the record

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

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1 as to why the court has made a provisional sex offender risk level
2 determination which departs from such presumptions.

3 3. A provisional sex offender risk level determination may be effec-
4 tive for a period not to exceed ninety days. Such a determination,
5 during the period it is in effect, shall have the same legal force as a
6 judicial determination following a hearing pursuant to section one
7 hundred sixty-eight-n of this article. Upon a determination pursuant to
8 section one hundred sixty-eight-n of this article, that determination
9 shall replace and supercede a provisional sex offender risk level deter-
10 mination. A provisional sex offender risk level determination shall not
11 be deemed to have any presumptive effect or evidentiary value with
12 respect to a determination pursuant to section one hundred sixty-eight-n
13 of this article. A person subject to a provisional sex offender risk
14 level determination shall have the same right to counsel as provided
15 pursuant to section one hundred sixty-eight-n of this article.

16 4. A provisional sex offender risk level determination may not be
17 issued without a defendant's consent, provided, however, that if it is
18 anticipated a defendant will be discharged, paroled or released from a
19 correctional facility, local correctional facility or hospital prior to
20 a judicial determination pursuant to section one hundred sixty-eight-n
21 of this article, such consent shall not be required. The court shall
22 allow the parties to be heard in writing or on the record prior to the
23 setting of a provisional sex offender risk level determination, but a
24 defendant's personal appearance shall not be required prior to the
25 setting of such a provisional risk level.

26 5. Notwithstanding any other provision of this section, to prevent the
27 posting of risk level information on the internet which may not accu-
28 rate reflect an offender's final risk level determination, provisional
29 sex offender risk level determinations shall not be posted on the inter-
30 net pursuant to section one hundred sixty-eight-q of this article or
31 other provisions of this article, provided, however, that upon a judi-
32 cial determination of a sex offender's risk level pursuant to section
33 one hundred sixty-eight-n of this article, the division shall promptly
34 place the required information for any level two or three sex offender
35 on the subdirectory established pursuant to section one hundred sixty-
36 eight-q of this article and make such listing available at all times on
37 the internet via the division homepage, pursuant to such section.

38 § 2. The opening paragraph of subdivision 6 of section 168-l of the
39 correction law, as amended by chapter 11 of the laws of 2002, is amended
40 to read as follows:

41 Applying these guidelines, the board shall [~~within sixty~~] at least
42 ninety calendar days prior to the discharge, parole, release to post-re-
43 lease supervision or release of a sex offender make a recommendation
44 which shall be confidential and shall not be available for public
45 inspection, to the sentencing court as to whether such sex offender
46 warrants the designation of sexual predator, sexually violent offender,
47 or predicate sex offender as defined in subdivision seven of section one
48 hundred sixty-eight-a of this article. In addition, the guidelines
49 shall be applied by the board to make a recommendation to the sentencing
50 court which shall be confidential and shall not be available for public
51 inspection, providing for one of the following three levels of notifica-
52 tion depending upon the degree of the risk of re-offense by the sex
53 offender.

54 § 3. Subdivision 2 of section 168-n of the correction law, as amended
55 by chapter 453 of the laws of 1999, is amended to read as follows:

1 2. In addition, applying the guidelines established in subdivision
2 five of section one hundred sixty-eight-1 of this article, the sentenc-
3 ing court shall also make a determination with respect to the level of
4 notification, after receiving a recommendation from the board pursuant
5 to section one hundred sixty-eight-1 of this article. Both determi-
6 nations of the sentencing court shall be made [~~thirty~~ at least fifteen
7 calendar days prior to discharge, parole or release.

8 § 4. This act shall take effect on the thirtieth day after it shall
9 have become a law.