STATE OF NEW YORK

6721

2019-2020 Regular Sessions

IN SENATE

September 16, 2019

Introduced by Sens. CARLUCCI, SKOUFIS, HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the correction law, in relation to enacting "The Domestic Violence Protection Act - Brittany's Law"

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 Protection Act - Brittany's Law".

§ 2. The penal law is amended by adding two new sections 195.03 and 195.04 to read as follows:

§ 195.03 Failure to register or verify as a violent felony offender in the second degree.

A person is guilty of failure to register or verify as a violent felony offender in the second degree when, being a violent felony offender required to register or verify pursuant to article six-B of the correction law, he or she fails to register or verify in the manner and within the time periods provided for in such article.

Failure to register or verify as a violent felony offender in the second degree is a class E felony.

§ 195.04 Failure to register or verify as a violent felony offender in the first degree.

A person is guilty of failure to register or verify as a violent felony offender in the first degree when he or she commits the crime of failure to register or verify as a violent felony offender in the second degree and has previously been convicted of failure to register or verify as a violent felony offender in the second degree as defined in section 195.03 of this article.

Failure to register or verify as a violent felony offender in the first degree is a class D felony.

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

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

LBD00571-01-9

ARTICLE 6-B

VIOLENT FELONY OFFENDER REGISTRATION

Section 162. Definitions.
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§ 162. Definitions. As used in this article, the following definitions apply:

1. "Violent felony offender" includes any person who is convicted of a violent felony offense as defined under section 70.02 of the penal law or a class A felony offense defined in the penal law other than a class A felony offense defined in article two hundred twenty of the penal law. 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. "Violent felony offense" means a conviction for an offense as defined under section 70.02 of the penal law or a class A felony offense defined in the penal law other than a class A offense defined in article two hundred twenty of the penal law.

3. "Law enforcement agency having jurisdiction" means the chief law enforcement officer in the village, town or city in which the violent felony offender expects to reside upon his or her discharge, probation, parole or upon any form of state or local conditional release.

4. "Division" means the division of criminal justice services established under article thirty-five of the executive law.

5. "Hospital" means a hospital as defined in subdivision two of section four hundred of this chapter and applies to persons committed to such hospital by order of commitment made pursuant to article sixteen of this chapter.

6. "Violent predator" means a person who has been convicted of a violent felony offense as defined in this article, or a violent felony offender as defined in this article who suffers from a mental abnormality that makes such person likely to engage in violent conduct.

7. "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal violent acts to a degree that makes the person a menace to the health and safety of other persons.

8. "Board" means the board of examiners of violent felony offenders established pursuant to section one hundred sixty-seven-f of this article.

9. "Local correctional facility" means a local correctional facility as that term is defined in subdivision sixteen of section two of this chapter.

§ 163. 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 violent felony 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.

(b) A photograph and set of fingerprints.

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

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

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

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

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

6. The division shall also establish a violent predator subdirectory pursuant to section one hundred sixty-seven-k of this article.

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

§ 164. Violent felony offender; relocation; notification. 1. In the case of any violent felony 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 violent felony offender from a correctional facility, hospital or local correctional facility to notify the law enforcement agency having jurisdiction where appropriate, and law enforcement agency having had jurisdiction at the time of his or her conviction, of the contemplated release or discharge of such violent felony offender, informing such law enforcement agencies of the name and aliases of the violent felony offender, the address at which he or she proposes to reside, 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 violent felony offender's fingerprints and photograph and a summary of his or her criminal record. If such violent felony offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the violent felony offender's parole officer within forty-eight hours to the law enforcement agency in which the new place of residence is located.

2. In the case of any violent felony offender convicted and sentenced to probation, conditional discharge or unconditional discharge, it shall be the duty of the court within twenty-four hours after such sentence to notify the law enforcement agency having jurisdiction, where appropriate, and the law enforcement agency having had jurisdiction at the time of his or her conviction, if different from where he or she currently resides, and/or where he or she currently resides, of the sentence of probation, conditional discharge or unconditional discharge, informing such law enforcement agencies of the name and aliases of the person, the address at which he or she proposes to reside, resided at and/or at which he or she currently resides, the amount of time to be served on probation, and the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such violent felony offender's fingerprints and photograph and a summary of his or her criminal record. If such person changes his or her place of residence while on probation, such notification of the change of residence shall be sent by the violent felony offender's probation officer within forty-eight hours to the law enforcement agency having jurisdiction in which the new place of residence is located.

3. In the case of any violent felony offender, who on the effective date of this subdivision is on parole or probation, it shall be the duty of such violent felony offender's parole or probation officer within forty-five calendar days of the effective date of this subdivision to notify the law enforcement agency having had jurisdiction in which such person resided at the time of his or her conviction, if different from where he or she currently resides and/or where he or she currently resides, of the name and aliases of such violent felony offender, the address at which he or she resided and/or at which he or she currently resides, the amount of time to be served on parole or probation, the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such violent felony offender's fingerprints and photograph and a summary of his or her criminal record. If such violent felony offender changes his or her place of residence while on parole or probation, such notification of the change of residence shall be sent by the violent felony offender's parole or probation officer within forty-eight hours to the law enforcement agency having jurisdiction in which the new place of residence is located.

4. In the case in which any violent felony 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 violent felony offender's fingerprints and photograph and a summary of his or her criminal record.

§ 165. Duties of the court. 1. Upon conviction the court shall certify that the person is a violent felony offender and shall include the certification in the order of commitment. The court shall also advise the violent felony offender of the duties of this article.

2. Any violent felony offender, who is released on probation or discharged upon payment of a fine 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. Where the court orders a violent felony offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such violent felony offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law. The court shall require the violent felony 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. The court shall on such form obtain the address where the violent felony offender expects to reside upon his or her release, and shall report the address to the division. The court shall give one copy of the form to the violent felony offender and shall send two copies to the division which shall forward one copy to the law enforcement agency having jurisdiction where the violent felony offender expects to reside upon his or her release. Within ten calendar days of being released on probation or discharged upon payment of a fine, such violent felony offender shall register with the division for purposes of verifying such violent felony offender's intended place of residence. On each anniversary of the violent felony offender's original registration date, the provisions of section one hundred sixty-seven of this article shall apply. The division shall also immediately forward the conviction data and fingerprints to the Federal Bureau of Investigation if not already obtained.

3. For violent felony offenders under this section, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-seven-f of this article to determine the duration of registration pursuant to section one hundred sixty-seven-b of this article and notification pursuant to subdivision six of section one hundred sixty-seven-f of this article. In making the determination, the court shall review any victim's statement and any materials submitted by the violent felony offender. The court shall also allow the violent felony offender to appear and be heard, and inform the violent felony offender of his or her right to have counsel appointed, if necessary.

§ 166. Discharge of violent felony offender from correctional facility; duties of official in charge. 1. Any violent felony offender, to be discharged, paroled or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall within forty-five 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 violent felony 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. The facility shall obtain on such form the address where the violent felony offender expects to reside upon his or her discharge, parole or release and shall report the address to the division. The facility shall give one copy of the form to the violent felony offender and shall send two copies to the division which shall forward one copy to the law

enforcement agency having jurisdiction where the violent felony offender expects to reside upon his or her discharge, parole or release. In addition, the facility shall give the violent felony offender a form to register with the division within ten calendar days for purposes of verifying such violent felony offender's intended place of residence.

2. The division shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation, if not already obtained.

§ 167. Duty to register. 1. Any violent felony offender, who is discharged, paroled or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall register with the division within ten calendar days for purposes of verifying such violent felony offender's intended place of residence.

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

(a) The violent felony 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 violent felony offender, and state that he or she still resides at the address last reported to the division.

(c) If the violent felony offender fails to mail the verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section.

3. The provisions of subdivision two of this section shall be applied to a violent felony offender required to register under this article except that such violent felony offender designated as a violent predator must personally verify with the local law enforcement agency, the registration every ninety calendar days after the date of the initial release or commencement of parole.

4. Any violent felony offender shall register with the division within ten calendar days prior to any change of address. The division shall, if the violent felony offender changes residence to another state, notify the appropriate state law enforcement agency with which the violent felony offender must register in the new state. If any person required to register as provided in this article changes the address of his or her residence, the violent felony offender shall within ten calendar days, inform in writing the law enforcement agency where last registered of the new address. The law enforcement agency shall, within three calendar days of receipt of the new address, forward this information to the division and to the law enforcement agency having jurisdiction in the new place of residence.

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

§ 167-a. Prior convictions; duty to inform and register. 1. It shall be the duty of the sentencing court applying the guidelines established in subdivision five of section one hundred sixty-seven-f of this article to determine the duration of registration pursuant to section one hundred sixty-seven-b of this article and notification pursuant to subdivision six of section one hundred sixty-seven-f of this article and notification for every violent felony offender who on the effective date of this article is then on parole or probation for committing a violent felony offense or a class A offense defined in the penal law except for

a class A offense defined in article two hundred twenty of the penal law.

2. Every violent felony offender who on the effective date of this article is then on parole or probation for a violent felony offense shall within ten calendar days of such determination register with his or her parole or probation officer. On each anniversary of the violent felony offender's initial registration date thereafter, the provisions of section one hundred sixty-seven of this article shall apply. Any violent felony 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 violent felony 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 violent felony offender according to the requirements imposed by this article. A parole or probation officer shall give one copy of the form to the violent felony 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 violent felony 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 violent felony offender required to register while released on parole or probation pursuant to section one hundred sixty-seven-i of this article.

§ 167-b. Duration of registration. The duration of registration for a violent felony offender shall be annually for a period of ten years from the initial date of registration, provided, however, that for a violent predator, shall annually register and verify quarterly for a minimum of ten years unless the court determines in accordance with section one hundred sixty-seven-i of this article, that the person no longer suffers from a mental abnormality that would make him or her likely to engage in a predatory violent offense.

§ 167-c. Registration requirements. Registration as required by this article shall consist of a statement in writing signed by the violent felony offender giving the information that is required by the division and the division shall enter the information into an appropriate electronic database or file.

§ 167-d. Notification of local law enforcement agencies of change of address. 1. Upon receipt of a change of address by a violent felony offender required to register under this article, the local law enforcement agency where the violent felony offender last registered shall within three calendar days of receipt of the new address, forward this information to the division and to the local law enforcement agency having jurisdiction of the new place of residence.

2. A change of address by a violent felony offender required to register under this article shall be immediately reported by the division to the appropriate law enforcement agency having jurisdiction where the violent felony offender is residing.

3. 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 subdivision six of section one hundred sixty-seven-f of this article.

§ 167-e. Registration for change of address from another state. 1. A violent felony offender who has been convicted of an offense which requires registration under section one hundred sixty-seven-c of this

article shall register the new address with the division no later than ten calendar days after such violent felony offender establishes residence in this state. The division shall coordinate with the designated law enforcement agency of the state of which the individual departed on information relevant to the duration of registration.

2. The division shall advise the board that the offender has established residence in this state. The board shall determine whether the offender is required to register with the division. If it is determined that the offender is required to register, the division shall notify the offender of his or her duty to register under this article and shall require the 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 offender. The division shall obtain on such form the address where the offender expects to reside within the state and the 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 offender expects to reside within this state. No later than thirty days prior to the board making a recommendation, the 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-seven-f 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-seven-f of this article and whether such offender shall be designated a violent felony offender or a violent predator. 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 offender and to the offender. It shall be the duty of the county court or supreme court in the county of residence of the offender, applying the guidelines established in subdivision five of section one hundred sixty-seven-f of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-seven-f of this article and whether such offender shall be designated a violent felony offender or a violent predator. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and 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 violent felony offender or a violent predator, which will determine how long you must register as an 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 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 offender on which the offender may apply for assignment of counsel. If the 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 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 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 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-seven-f of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-seven-f of this article and whether such offender shall be designated a violent felony offender or a violent predator. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of 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 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 offender upon the ground that the 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.

3. If an offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision two of this section.

§ 167-f. Board of examiners of violent felony offenders. 1. There shall be a board of examiners of violent felony offenders which shall possess the powers and duties specified in this section. Such board

shall consist of five members of the department who shall be appointed by the governor, three of whom shall be experts in the field of the behavior and treatment of violent felony offenders. The term of office of each member of such board shall be for six years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom he or she is to succeed. In the event of the inability to act of any member, the governor may appoint some competent informed person to act in his or her stead during the continuance of such disability.

2. The governor shall designate one of the members of the board as chairman to serve in such capacity at the pleasure of the governor or until the member's term of office expires and a successor is designated in accordance with law, whichever first occurs.

3. Any member of the board may be removed by the governor for cause after an opportunity to be heard.

4. Except as otherwise provided by law, a majority of the board shall constitute a quorum for the transaction of all business of the board.

5. The board shall develop guidelines and procedures to assess the risk of a repeat offense by such violent felony 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 violent felony offender has a mental abnormality;

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

(iii) whether the violent felony offender served the maximum term;

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

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

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

(i) the relationship between such violent felony offender and the victim;

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

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

(e) whether psychological or psychiatric profiles indicate a risk of recidivism;

(f) the violent felony offender's response to treatment;

(g) recent behavior, including behavior while confined;

(h) recent threats or gestures against persons or expressions of intent to commit additional offenses; and

(i) review of any victim impact statement.

6. Applying these guidelines, the board shall within sixty calendar days prior to the discharge, parole or release of a violent felony offender make a recommendation which shall be confidential and shall not

be available for public inspection, to the sentencing court as to whether such violent felony offender warrants the designation of violent predator. In addition, the guidelines shall be applied by the board to make a recommendation to the sentencing court, providing for one of the following three levels of notification notwithstanding any other provision of law depending upon the degree of the risk of re-offense by the violent felony offender.

(a) If the risk of repeat offense is low, a level one designation shall be given to such violent felony offender. In such case the law enforcement agency having jurisdiction and the law enforcement agency having had jurisdiction at the time of his or her conviction shall be notified pursuant to this article.

(b) If the risk of repeat offense is moderate, a level two designation shall be given to such violent felony offender. In such case the law enforcement agency having jurisdiction and the law enforcement agency having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which may include approximate address based on violent felony offender's zip code, a photograph of the offender, background information including the offender's crime of conviction, modus of operation, type of victim targeted and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such violent felony offender. Any entity receiving information on a violent felony offender may disclose or further disseminate such information at their discretion.

(c) If the risk of repeat offense is high and there exists a threat to the public safety, such violent felony offender shall be deemed a "violent predator" and a level three designation shall be given to such violent felony offender. In such case, the law enforcement agency having jurisdiction and the law enforcement agency having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which may include the violent felony offender's exact address, a photograph of the offender, background information including the offender's crime of conviction, modus of operation, type of victim targeted, and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such violent felony offenders.

Any entity receiving information on a violent felony offender may disclose or further disseminate such information at their discretion. In addition, in such case, the information described in this section shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public.

7. Upon request by the court, pursuant to section one hundred sixty-seven-i of this article, the board shall provide an updated report pertaining to the violent felony offender petitioning relief of duty to register.

§ 167-g. Review. Notwithstanding any other provision of law to the contrary, any state or local correctional facility, hospital or institution shall forward relevant information pertaining to a violent felony offender to be discharged, paroled or released to the board for review no later than one hundred twenty days prior to the release or discharge and the board shall make recommendations as provided in subdivision six of section one hundred sixty-seven-f of this article within sixty days of receipt of the information. Information may include but may not be limited to the commitment file, medical file and treatment file pertain-

ing to such person. Such person shall be permitted to submit to the board any information relevant to the review.

§ 167-h. Judicial determination. 1. A determination that an offender is a violent felony offender or a violent predator shall be made prior to the discharge, parole or release of such offender by the sentencing court after receiving a recommendation from the board pursuant to section one hundred sixty-seven-f of this article.

2. In addition, the sentencing court shall also make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-seven-f of this article. Both determinations of the sentencing court shall be made thirty calendar days prior to discharge, parole or release.

3. In making the determination, the court shall review any victim's statement and any materials submitted by the violent felony offender. The court shall also allow the violent felony offender to appear and be heard, and inform the violent felony offender of his or her right to have counsel appointed, if necessary.

4. Upon determination that the risk of repeat offense and threat to public safety is high, the sentencing court shall also notify the division of such fact for the purposes of section one hundred sixty-seven-k of this article.

5. Upon the reversal of a conviction of the violent felony offense, the court shall order the expungement of any records required to be kept pursuant to this section.

§ 167-i. Petition for relief. Any violent felony offender required to register pursuant to this article may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court. Upon receipt of the petition for relief, the court shall notify the board and request an updated report pertaining to the violent felony offender. After receiving the report from the board, the court may grant or deny the relief sought. The court may consult with the victim prior to making a determination on the petition. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to this article upon conviction of any offense requiring registration in the future.

§ 167-j. Special telephone number. 1. Pursuant to section one hundred sixty-three of this article, the division shall also operate a telephone number that members of the public may call 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 and provide the caller with the relevant information according to risk as described in subdivision six of section one hundred sixty-seven-f of this article. 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. 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.

3. 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.

§ 167-k. Violent predator subdirectory. 1. The division shall maintain a subdirectory of violent predators. The subdirectory shall include the exact address and photograph of the violent felony offender along with the following information, if available: name, physical description, age and distinctive markings. Background information including the violent felony offender's crime of conviction, modus of operation, type of victim targeted, and a description of special conditions imposed on the violent felony offender shall also be included. The subdirectory shall have violent felony offender listings categorized by county and zip code. A copy of the subdirectory shall annually be distributed to the offices of local village, town or city police departments for purposes of public access. Such departments shall require that a person in writing express a purpose in order to have access to the subdirectory and such department shall maintain these requests. Any information identifying the victim by name, birth date, address or relation to the violent felony offender shall be excluded from the subdirectory distributed for purposes of public access. The subdirectory provided for in this section shall be updated periodically to maintain its efficiency and usefulness and may be computer accessible.

2. Any person who uses information disclosed pursuant to this section in violation of the law shall in addition to any other penalty or fine imposed, be subject to a fine of not less than five hundred dollars and not more than one thousand dollars. Unauthorized removal or duplication of the subdirectory from the offices of local, village or city police department shall be punishable by a fine not to exceed one thousand dollars. In addition, the attorney general, any district attorney, or any person aggrieved 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 such action. The foregoing remedies shall be independent of any other remedies or proce-

dures that may be available to an aggrieved party under other provisions of law.

§ 167-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, provided that it is shown that such 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 provided that it is shown that such official, employee or agency acted reasonably and in good faith.

§ 167-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.

§ 167-n. Failure to register; penalty. Any person required to register pursuant to the provisions of this article who fails to register in the manner and within the time periods provided for in this article shall be guilty of a class E felony for the first offense, and for a second or subsequent offense shall be guilty of a class D felony respectively in accordance with sections 195.03 and 195.04 of the penal law. Any such failure to register may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law which shall be in addition to any other penalties provided by law.

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

§ 167-p. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the 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 of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 167-q. Subdirectory; internet posting. 1. The division shall maintain a subdirectory of level two and three violent felony offenders. The subdirectory shall include the exact address, address of the offender's place of employment and photograph of the violent felony offender along with the following information, if available: name, physical description, age and distinctive markings. Background information including the violent felony offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the violent felony offender is enrolled, attends, is employed or resides and a description of special conditions imposed on the violent felony offender shall also be included. The subdirectory shall have violent felony offender listings categorized by county and zip code. A copy of the subdirectory shall annually be distributed to the offices of local village, town, city, county or state law enforcement agencies for purposes of public access. The division shall distribute monthly updates to the offices of local

village, town, city, county or state law enforcement agencies for purposes of public access. Such departments shall require that a person in writing provide their name and address prior to viewing the subdirectory. Any information identifying the victim by name, birth date, address or relation to the violent felony offender shall be excluded from the subdirectory distributed for purposes of public access. The subdirectory provided for herein shall be updated monthly to maintain its efficiency and usefulness and shall be computer accessible. Such subdirectory shall be made available at all times on the internet via the division homepage. Any person may apply to the division to receive automated e-mail notifications whenever a new or updated subdirectory registration occurs in a geographic area specified by such person. The division shall furnish such service at no charge to such person, who shall request e-mail notification by county and/or zip code on forms developed and provided by the division. E-mail notification is limited to three geographic areas per e-mail account.

2. Any person who uses information disclosed pursuant to this section in violation of the law shall in addition to any other penalty or fine imposed, be subject to a fine of not less than five hundred dollars and not more than one thousand dollars. Unauthorized removal or duplication of the subdirectory from the offices of local, village or city police department shall be punishable by a fine not to exceed one thousand dollars. In addition, the attorney general, any district attorney, or any person aggrieved 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 such action. 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.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.