

STATE OF NEW YORK

8270

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

Introduced by M. of A. WEPRIN, O'DONNELL, AUBRY, CUSICK -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the penal law, the executive law and the criminal procedure law, in relation to establishing residency restrictions for sex offenders

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

1 Section 1. Paragraph (f) of subdivision 1 of section 168-b of the
2 correction law, as relettered by chapter 10 of the laws of 2003, is
3 relettered paragraph (g) and a new paragraph (f) is added to read as
4 follows:

5 (f) If the sex offender has been given a level 2 or 3 designation and
6 stands convicted of a felony which requires registration pursuant to
7 this article, whether such offender is subject to a residency
8 restriction pursuant to section one hundred sixty-eight-w of this arti-
9 cle.

10 § 2. Section 168-b of the correction law is amended by adding a new
11 subdivision 13 to read as follows:

12 13. The division, upon initial registration and thereafter in annual
13 correspondence as required by subdivision four of this section, shall
14 advise each sex offender who is subject to a residency restriction
15 pursuant to section one hundred sixty-eight-w of this article, concern-
16 ing the term's specific duration and the accurate termination date of
17 such restriction.

18 § 3. Subdivisions 2 and 3 of section 168-d of the correction law,
19 subdivision 2 as amended by chapter 684 of the laws of 2005 and subdivi-
20 sion 3 as amended by chapter 11 of the laws of 2002, are amended to read
21 as follows:

22 2. Any sex offender, who is released on probation or discharged upon
23 payment of a fine, conditional discharge or unconditional discharge
24 shall, prior to such release or discharge, be informed of his or her

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

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1 duty to register under this article by the court in which he or she was
2 convicted. At the time sentence is imposed, such sex offender shall
3 register with the division on a form prepared by the division. The court
4 shall require the sex offender to read and sign such form and to
5 complete the registration portion of such form. The court shall on such
6 form obtain the address where the sex offender expects to reside upon
7 his or her release, and the name and address of any institution of high-
8 er education he or she expects to be employed by, enrolled in, attending
9 or employed, whether for compensation or not, and whether he or she
10 expects to reside in a facility owned or operated by such an institu-
11 tion, and shall report such information to the division. The court shall
12 give one copy of the form to the sex offender and shall send two copies
13 to the division which shall forward the information to the law enforce-
14 ment agencies having jurisdiction. The court shall also notify the
15 district attorney and the sex offender of the date of the determination
16 proceeding to be held pursuant to subdivision three of this section,
17 which shall be held at least forty-five days after such notice is given.
18 This notice shall include the following statement or a substantially
19 similar statement: "This proceeding is being held to determine whether
20 you will be classified as a level 3 offender (risk of repeat offense is
21 high), a level 2 offender (risk of repeat offense is moderate), or a
22 level 1 offender (risk of repeat offense is low), or whether you will be
23 designated as a sexual predator, a sexually violent offender or a predi-
24 cate sex offender, which will determine how long you must register as a
25 sex offender and how much information can be provided to the public
26 concerning your registration. If you are classified as a level 2 or
27 level 3 offender for a felony sex offense, the court may also determine
28 whether you will be subject to a residency restriction which may
29 restrict where you can establish your permanent residence. If you fail
30 to appear at this proceeding, without sufficient excuse, it shall be
31 held in your absence. Failure to appear may result in a longer period of
32 registration or a higher level of community notification because you are
33 not present to offer evidence or contest evidence offered by the
34 district attorney." The court shall also advise the sex offender that
35 he or she has a right to a hearing prior to the court's determination,
36 that he or she has the right to be represented by counsel at the hearing
37 and that counsel will be appointed if he or she is financially unable to
38 retain counsel. If the sex offender applies for assignment of counsel to
39 represent him or her at the hearing and counsel was not previously
40 assigned to represent the sex offender in the underlying criminal
41 action, the court shall determine whether the offender is financially
42 unable to retain counsel. If such a finding is made, the court shall
43 assign counsel to represent the sex offender pursuant to article eigh-
44 teen-B of the county law. Where the court orders a sex offender released
45 on probation, such order must include a provision requiring that he or
46 she comply with the requirements of this article. Where such sex offen-
47 der violates such provision, probation may be immediately revoked in the
48 manner provided by article four hundred ten of the criminal procedure
49 law.

50 3. For sex offenders released on probation or discharged upon payment
51 of a fine, conditional discharge or unconditional discharge, it shall be
52 the duty of the court applying the guidelines established in subdivision
53 five of section one hundred sixty-eight-1 of this article to determine
54 the level of notification pursuant to subdivision six of section one
55 hundred sixty-eight-1 of this article [and], whether such sex offender
56 shall be designated a sexual predator, sexually violent offender, or

1 predicate sex offender as defined in subdivision seven of section one
2 hundred sixty-eight-a of this article and, when determining the level of
3 notification and applying the guidelines established in subdivision
4 five-a of section one hundred sixty-eight-1 of this article, whether a
5 sex offender, classified as a level 2 or level 3 offender who stands
6 convicted of a felony which requires registration pursuant to this arti-
7 cle, will be subject to a residency restriction pursuant to section one
8 hundred sixty-eight-w of this article. At least fifteen days prior to
9 the determination proceeding, the district attorney shall provide to the
10 court and the sex offender a written statement setting forth the deter-
11 minations sought by the district attorney together with the reasons for
12 seeking such determinations. The court shall allow the sex offender to
13 appear and be heard. The state shall appear by the district attorney, or
14 his or her designee, who shall bear the burden of proving the facts
15 supporting the determinations sought by clear and convincing evidence.
16 Where there is a dispute between the parties concerning the determi-
17 nations, the court shall adjourn the hearing as necessary to permit the
18 sex offender or the district attorney to obtain materials relevant to
19 the determinations from any state or local facility, hospital, institu-
20 tion, office, agency, department or division. Such materials may be
21 obtained by subpoena if not voluntarily provided to the requesting
22 party. In making the determinations, the court shall review any victim's
23 statement and any relevant materials and evidence submitted by the sex
24 offender and the district attorney and the court may consider reliable
25 hearsay evidence submitted by either party provided that it is relevant
26 to the determinations. Facts previously proven at trial or elicited at
27 the time of entry of a plea of guilty shall be deemed established by
28 clear and convincing evidence and shall not be relitigated. The court
29 shall render an order setting forth its determinations and the findings
30 of fact and conclusions of law on which the determinations are based. A
31 copy of the order shall be submitted by the court to the division. Upon
32 application of either party, the court shall seal any portion of the
33 court file or record which contains material that is confidential under
34 any state or federal statute. Either party may appeal as of right from
35 the order pursuant to the provisions of articles fifty-five, fifty-six
36 and fifty-seven of the civil practice law and rules. Where counsel has
37 been assigned to represent the sex offender upon the ground that the sex
38 offender is financially unable to retain counsel, that assignment shall
39 be continued throughout the pendency of the appeal, and the person may
40 appeal as a poor person pursuant to article eighteen-B of the county
41 law.

42 § 4. Subdivision 2 of section 168-k of the correction law, as amended
43 by chapter 684 of the laws of 2005, is amended to read as follows:

44 2. The division shall advise the board that the sex offender has
45 established residence in this state. The board shall determine whether
46 the sex offender is required to register with the division. If it is
47 determined that the sex offender is required to register, the division
48 shall notify the sex offender of his or her duty to register under this
49 article and shall require the sex offender to sign a form as may be
50 required by the division acknowledging that the duty to register and the
51 procedure for registration has been explained to the sex offender. The
52 division shall obtain on such form the address where the sex offender
53 expects to reside within the state and the sex offender shall retain one
54 copy of the form and send two copies to the division which shall provide
55 the information to the law enforcement agency having jurisdiction where
56 the sex offender expects to reside within this state. No later than

thirty days prior to the board making a recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article [and], whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article and, when determining the level of notification and applying the guidelines established in subdivision five-a of section one hundred sixty-eight-1 of this article, whether a sex offender, classified as a level 2 or level 3 offender who stands convicted of a felony which requires registration pursuant to this article, will be subject to a residency restriction pursuant to section one hundred sixty-eight-w of this article. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article [and], whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article and, when determining the level of notification and applying the guidelines established in subdivision five-a of section one hundred sixty-eight-1 of this article, whether a sex offender, classified as a level 2 or level 3 offender who stands convicted of a felony which requires registration pursuant to this article, will be subject to a residency restriction pursuant to section one hundred sixty-eight-w of this article. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you are classified as a level 2 or level 3 offender for a felony sex offense, the court may also determine whether you will be subject to a residency restriction which may restrict where you can establish your permanent residence. 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

1 district attorney." The court shall also advise the sex offender that
2 he or she has a right to a hearing prior to the court's determination,
3 that he or she has the right to be represented by counsel at the hearing
4 and that counsel will be appointed if he or she is financially unable to
5 retain counsel. A returnable form shall be enclosed in the court's
6 notice to the sex offender on which the sex offender may apply for
7 assignment of counsel. If the sex offender applies for assignment of
8 counsel and the court finds that the offender is financially unable to
9 retain counsel, the court shall assign counsel to represent the sex
10 offender pursuant to article eighteen-B of the county law. If the
11 district attorney seeks a determination that differs from the recommen-
12 dation submitted by the board, at least ten days prior to the determi-
13 nation proceeding the district attorney shall provide to the court and
14 the sex offender a statement setting forth the determinations sought by
15 the district attorney together with the reasons for seeking such deter-
16 minations. The court shall allow the sex offender to appear and be
17 heard. The state shall appear by the district attorney, or his or her
18 designee, who shall bear the burden of proving the facts supporting the
19 determinations sought by clear and convincing evidence. It shall be the
20 duty of the court applying the guidelines established in subdivision
21 five of section one hundred sixty-eight-1 of this article to determine
22 the level of notification pursuant to subdivision six of section one
23 hundred sixty-eight-1 of this article [and], whether such sex offender
24 shall be designated a sexual predator, sexually violent offender, or
25 predicate sex offender as defined in subdivision seven of section one
26 hundred sixty-eight-a of this article and, when determining the level of
27 notification and applying the guidelines established by subdivision
28 five-a of section one hundred sixty-eight-1 of this article, whether a
29 sex offender, classified as a level 2 or level 3 offender who stands
30 convicted of a felony which requires registration pursuant to this arti-
31 cle, will be subject to a residency restriction pursuant to section one
32 hundred sixty-eight-w of this article. Where there is a dispute between
33 the parties concerning the determinations, the court shall adjourn the
34 hearing as necessary to permit the sex offender or the district attorney
35 to obtain materials relevant to the determinations from the state board
36 of examiners of sex offenders or any state or local facility, hospital,
37 institution, office, agency, department or division. Such materials may
38 be obtained by subpoena if not voluntarily provided to the requesting
39 party. In making the determinations the court shall review any victim's
40 statement and any relevant materials and evidence submitted by the sex
41 offender and the district attorney and the recommendation and any mate-
42 rial submitted by the board, and may consider reliable hearsay evidence
43 submitted by either party, provided that it is relevant to the determi-
44 nations. If available, facts proven at trial or elicited at the time of
45 a plea of guilty shall be deemed established by clear and convincing
46 evidence and shall not be relitigated. The court shall render an order
47 setting forth its determinations and the findings of fact and conclu-
48 sions of law on which the determinations are based. A copy of the order
49 shall be submitted by the court to the division. Upon application of
50 either party, the court shall seal any portion of the court file or
51 record which contains material that is confidential under any state or
52 federal statute. Either party may appeal as of right from the order
53 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
54 seven of the civil practice law and rules. Where counsel has been
55 assigned to represent the sex offender upon the ground that the sex
56 offender is financially unable to retain counsel, that assignment shall

1 be continued throughout the pendency of the appeal, and the person may
2 appeal as a poor person pursuant to article eighteen-B of the county
3 law.

4 § 5. Section 168-1 of the correction law is amended by adding a new
5 subdivision 5-a to read as follows:

6 5-a. The board shall develop guidelines and procedures to assess
7 whether to recommend that a sex offender who stands convicted of a felo-
8 ny should be subject to a residency restriction as described in section
9 one hundred sixty-eight-w of this article. Such guidelines shall include
10 the following:

11 (a) whether a residency restriction would adversely impact the
12 offender's successful reentry and reintegration into society;

13 (b) whether a residency restriction is necessary, based on the
14 offender's current behavior and present and prospective living arrange-
15 ments to protect public safety;

16 (c) the ability of the offender to obtain permanent and stable housing
17 in order to reduce the likelihood that the offender will be transient;

18 (d) the accessibility to supportive services, including, but not
19 limited to, locally available sex offender treatment programs that have
20 demonstrated effectiveness in reducing sex offender recidivism and
21 increasing public safety;

22 (e) the ability of the offender to find gainful and stable employment;
23 and

24 (f) whether the offense that requires the offender to register pursu-
25 ant to this article was committed against a minor child.

26 § 6. The opening paragraph of subdivision 6 of section 168-1 of the
27 correction law, as amended by chapter 11 of the laws of 2002, is amended
28 to read as follows:

29 Applying [~~these~~] the guidelines established in subdivision five of
30 this section, the board shall within sixty calendar days prior to the
31 discharge, parole, release to post-release supervision or release of a
32 sex offender make a recommendation which shall be confidential and shall
33 not be available for public inspection, to the sentencing court as to
34 whether such sex offender warrants the designation of sexual predator,
35 sexually violent offender, or predicate sex offender as defined in
36 subdivision seven of section one hundred sixty-eight-a of this article.
37 In addition, the guidelines established in subdivision five of this
38 section shall be applied by the board to make a recommendation to the
39 sentencing court which shall be confidential and shall not be available
40 for public inspection, providing for one of the [~~following~~] three levels
41 of notification described in paragraphs (a), (b), and (c) of this subdi-
42 vision depending upon the degree of the risk of re-offense by the sex
43 offender. Further, when the board makes a recommendation to the sentenc-
44 ing court that a sex offender be classified as a level 2 or level 3
45 offender and such offender stands convicted of a felony which requires
46 registration pursuant to this article, the board shall also apply the
47 guidelines established in subdivision five-a of this section and may
48 make a recommendation regarding whether such offender should be subject
49 to a residency restriction as described in section one hundred sixty-
50 eight-w of this article.

51 § 7. Subdivision 7 of section 168-1 of the correction law, as amended
52 by chapter 11 of the laws of 2002, is amended to read as follows:

53 7. Upon request by the court, pursuant to section one hundred sixty-
54 eight-o of this article, the board shall provide an updated report
55 pertaining to the sex offender petitioning for relief of the duty to
56 register [~~or~~], for a modification of his or her level of notification or

1 for modification or termination of a residency restriction imposed by
2 the sentencing court.

3 § 8. Subdivisions 2 and 3 of section 168-n of the correction law,
4 subdivision 2 as amended by chapter 453 of the laws of 1999 and subdivi-
5 sion 3 as amended by chapter 684 of the laws of 2005, are amended to
6 read as follows:

7 2. In addition, applying the guidelines established in subdivision
8 five of section one hundred sixty-eight-1 of this article, the sentenc-
9 ing court shall also make a determination with respect to the level of
10 notification, after receiving a recommendation from the board pursuant
11 to section one hundred sixty-eight-1 of this article. [~~Both~~] Further,
12 when the court classifies a sex offender as a level 2 or level 3 offen-
13 der and such offender stands convicted of a felony which requires regis-
14 tration pursuant to this article and the board has recommended that such
15 offender be subject to a residency restriction, the court shall apply
16 the guidelines established in subdivision five-a of section one hundred
17 sixty-eight-1 of this article and make a determination with respect to
18 whether such offender shall be subject to a residency restriction in
19 accordance with section one hundred sixty-eight-w of this article. All
20 determinations of the sentencing court pursuant to this section shall be
21 made thirty calendar days prior to discharge, parole or release.

22 3. No later than thirty days prior to the board's recommendation, the
23 sex offender shall be notified that his or her case is under review and
24 that he or she is permitted to submit to the board any information rele-
25 vant to the review. Upon receipt of the board's recommendation, the
26 sentencing court shall determine whether the sex offender was previously
27 found to be eligible for assigned counsel in the underlying case. Where
28 such a finding was previously made, the court shall assign counsel to
29 represent the offender, pursuant to article eighteen-B of the county
30 law. At least twenty days prior to the determination proceeding, the
31 sentencing court shall notify the district attorney, the sex offender
32 and the sex offender's counsel, in writing, of the date of the determi-
33 nation proceeding and shall also provide the district attorney, the sex
34 offender and the sex offender's counsel with a copy of the recommenda-
35 tion received from the board and any statement of the reasons for the
36 recommendation received from the board. This notice shall include the
37 following statement or a substantially similar statement: "This
38 proceeding is being held to determine whether you will be classified as
39 a level 3 offender (risk of repeat offense is high), a level 2 offender
40 (risk of repeat offense is moderate), or a level 1 offender (risk of
41 repeat offense is low), or whether you will be designated as a sexual
42 predator, a sexually violent offender or a predicate sex offender, which
43 will determine how long you must register as a sex offender and how much
44 information can be provided to the public concerning your registration.
45 If you are classified as a level 2 or level 3 offender for a felony sex
46 offense, the court may also determine whether you will be subject to a
47 residency restriction which may restrict where you can establish your
48 permanent residence. If you fail to appear at this proceeding, without
49 sufficient excuse, it shall be held in your absence. Failure to appear
50 may result in a longer period of registration or a higher level of
51 community notification because you are not present to offer evidence or
52 contest evidence offered by the district attorney." The written notice
53 to the sex offender shall also advise the offender that he or she has a
54 right to a hearing prior to the court's determination, and that he or
55 she has the right to be represented by counsel at the hearing. If coun-
56 sel has been assigned to represent the offender at the determination

1 proceeding, the notice shall also provide the name, address and tele-
2 phone number of the assigned counsel. Where counsel has not been
3 assigned, the notice shall advise the sex offender that counsel will be
4 appointed if he or she is financially unable to retain counsel, and a
5 returnable form shall be enclosed in the court's notice to the sex
6 offender on which the sex offender may apply for assignment of counsel.
7 If the sex offender applies for assignment of counsel and the court
8 finds that the offender is financially unable to retain counsel, the
9 court shall assign counsel to represent the sex offender pursuant to
10 article eighteen-B of the county law. If the district attorney seeks a
11 determination that differs from the recommendation submitted by the
12 board, at least ten days prior to the determination proceeding the
13 district attorney shall provide to the court and the sex offender a
14 statement setting forth the determinations sought by the district attor-
15 ney together with the reasons for seeking such determinations. The court
16 shall allow the sex offender to appear and be heard. The state shall
17 appear by the district attorney, or his or her designee, who shall bear
18 the burden of proving the facts supporting the determinations sought by
19 clear and convincing evidence. Where there is a dispute between the
20 parties concerning the determinations, the court shall adjourn the hear-
21 ing as necessary to permit the sex offender or the district attorney to
22 obtain materials relevant to the determinations from the state board of
23 examiners of sex offenders or any state or local facility, hospital,
24 institution, office, agency, department or division. Such materials may
25 be obtained by subpoena if not voluntarily provided to the requesting
26 party. In making the determinations the court shall review any victim's
27 statement and any relevant materials and evidence submitted by the sex
28 offender and the district attorney and the recommendation and any mate-
29 rials submitted by the board, and may consider reliable hearsay evidence
30 submitted by either party, provided that it is relevant to the determi-
31 nations. Facts previously proven at trial or elicited at the time of
32 entry of a plea of guilty shall be deemed established by clear and
33 convincing evidence and shall not be relitigated. The court shall render
34 an order setting forth its determinations and the findings of fact and
35 conclusions of law on which the determinations are based. A copy of the
36 order shall be submitted by the court to the division. Upon application
37 of either party, the court shall seal any portion of the court file or
38 record which contains material that is confidential under any state or
39 federal statute. Either party may appeal as of right from the order
40 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
41 seven of the civil practice law and rules. Where counsel has been
42 assigned to represent the sex offender upon the ground that the sex
43 offender is financially unable to retain counsel, that assignment shall
44 be continued throughout the pendency of the appeal, and the person may
45 appeal as a poor person pursuant to article eighteen-B of the county
46 law.

47 § 9. The section heading of section 168-o of the correction law, as
48 amended by chapter 453 of the laws of 1999, is amended and a new subdi-
49 vision 2-a is added to read as follows:

50 Petition for relief or modification of level of notification and/or
51 residency restriction.

52 2-a. Any sex offender subject to a residency restriction pursuant to
53 this article may petition the court which imposed such restriction for
54 an order terminating or modifying such residency restriction. The peti-
55 tion shall set forth the reasons for seeking such modification or termi-
56 nation. The sex offender shall bear the burden of proving the facts

1 supporting the requested modification or termination by clear and
2 convincing evidence. Such a petition shall not be considered more than
3 annually. The district attorney and the sex offender may appeal as of
4 right from an order issued under this subdivision pursuant to the
5 provisions of articles fifty-five, fifty-six and fifty-seven of the
6 civil practice law and rules. Where counsel has been assigned to repre-
7 sent the sex offender upon the ground that the sex offender is finan-
8 cially unable to retain counsel, that assignment shall be continued
9 throughout the pendency of the appeal, and the person may appeal as a
10 poor person pursuant to article eighteen-B of the county law.

11 § 10. Section 168-o of the correction law is amended by adding a new
12 subdivision 3-a to read as follows:

13 3-a. Prior to the expiration of a residency restriction ordered pursu-
14 ant to section one hundred sixty-eight-w of this article, the district
15 attorney may file a petition with the sentencing court or with the court
16 which ordered the residency restriction to extend the duration of such
17 residency restriction in accordance with subdivision four of section one
18 hundred sixty-eight-w of this article. The petition shall set forth the
19 reasons for seeking to extend the duration of such residency
20 restriction. The district attorney shall bear the burden of proving new
21 facts and circumstances that warrant the requested extension, by clear
22 and convincing evidence. In the event that the district attorney's peti-
23 tion is granted, the sex offender may appeal as of right from the order,
24 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
25 seven of the civil practice law and rules. Where counsel has been
26 assigned to represent the offender upon the ground that he or she is
27 financially unable to retain counsel, that assignment shall be continued
28 throughout the pendency of the appeal, and the person may proceed as a
29 poor person, pursuant to article eighteen-B of the county law.

30 § 11. Subdivision 4 of section 168-o of the correction law, as added
31 by chapter 453 of the laws of 1999, is amended to read as follows:

32 4. Upon receipt of a petition submitted pursuant to subdivision one,
33 two [~~or~~], two-a, three, or three-a of this section, the court shall
34 forward a copy of the petition to the board and request an updated
35 recommendation pertaining to the sex offender and shall provide a copy
36 of the petition to the other party. The court shall also advise the sex
37 offender that he or she has the right to be represented by counsel at
38 the hearing and counsel will be appointed if he or she is financially
39 unable to retain counsel. A returnable form shall be enclosed in the
40 court's notice to the sex offender on which the sex offender may apply
41 for assignment of counsel. If the sex offender applies for assignment
42 of counsel and the court finds that the offender is financially unable
43 to retain counsel, the court shall assign counsel to represent the
44 offender, pursuant to article eighteen-B of the county law. Where the
45 petition was filed by a district attorney, at least thirty days prior to
46 making an updated recommendation the board shall notify the sex offender
47 and his or her counsel that the offender's case is under review and he
48 or she is permitted to submit to the board any information relevant to
49 the review. The board's updated recommendation on the sex offender
50 shall be confidential and shall not be available for public inspection.
51 After receiving an updated recommendation from the board concerning a
52 sex offender, the court shall, at least thirty days prior to ruling upon
53 the petition, provide a copy of the updated recommendation to the sex
54 offender, the sex offender's counsel and the district attorney and noti-
55 fy them, in writing, of the date set by the court for a hearing on the
56 petition. After reviewing the recommendation received from the board and

1 any relevant materials and evidence submitted by the sex offender and
2 the district attorney, the court may grant or deny the petition. The
3 court may also consult with the victim prior to making a determination
4 on the petition. The court shall render an order setting forth its
5 determination, and the findings of fact and conclusions of law on which
6 the determination is based. If the petition is granted, it shall be the
7 obligation of the court to submit a copy of its order to the division.
8 Upon application of either party, the court shall seal any portion of
9 the court file or record which contains material that is confidential
10 under any state or federal statute.

11 § 12. Section 168-t of the correction law, as amended by chapter 373
12 of the laws of 2007, is amended to read as follows:

13 § 168-t. Penalty. Any sex offender required to register or to verify
14 pursuant to the provisions of this article who fails to register or
15 verify in the manner and within the time periods provided for in this
16 article shall be guilty of a class E felony upon conviction for the
17 first offense, and upon conviction for a second or subsequent offense
18 shall be guilty of a class D felony. Any sex offender who violates the
19 provisions of section one hundred sixty-eight-v of this article or know-
20 ingly violates a residency restriction imposed pursuant to section one
21 hundred sixty-eight-w of this article shall be guilty of a class A
22 misdemeanor upon conviction for the first offense, and upon conviction
23 for a second or subsequent offense shall be guilty of a class D felony.
24 Any such failure to register or verify may also be the basis for revoca-
25 tion of parole pursuant to section two hundred fifty-nine-i of the exec-
26 utive law or the basis for revocation of probation pursuant to article
27 four hundred ten of the criminal procedure law.

28 § 13. Section 168-w of the correction law, as relettered by chapter
29 604 of the laws of 2005, is relettered section 168-x and a new section
30 168-w is added to read as follows:

31 § 168-w. Residency restriction for certain sex offenders. 1. Pursuant
32 to subdivision three of section one hundred sixty-eight-d, subdivision
33 two of section one hundred sixty-eight-k and subdivision two of section
34 one hundred sixty-eight-n of this article, when the court which makes
35 the determination regarding the level of notification of a sex offender
36 classifies such offender as a level 2 or level 3 offender and such
37 offender was convicted of a felony which requires registration pursuant
38 to this article and, where applicable, the board has recommended that
39 such offender be subject to a residency restriction, the court may order
40 that such offender comply with a residency restriction according to this
41 section. Such residency restriction may be imposed only after the court
42 has applied the guidelines established in subdivision five-a of section
43 one hundred sixty-eight-l of this article.

44 2. When the court determines that a residency restriction is necessary
45 pursuant to the provisions of this article, the court may order that the
46 sex offender be prohibited from knowingly establishing his or her perma-
47 nent residence within up to one thousand feet of any school grounds, as
48 the term is defined in paragraph (a) of subdivision fourteen of section
49 220.00 of the penal law. For the purposes of this subdivision, the term
50 permanent residence shall mean the place where the offender maintains a
51 fixed, permanent and principal home and to which he or she, whenever
52 temporarily away, intends to return. Permanent residence shall not
53 include temporary or transitional housing such as a shelter, residential
54 treatment program, or other similar temporary or transient housing.

55 3. The court shall determine the duration of the residency restriction
56 imposed pursuant to this section provided, however, that such

restriction shall not apply for more than ten years after the later of the offender's release from jail or prison or the period or term of probation, parole, conditional release or post-release supervision for the offense which requires the offender to register as a sex offender pursuant to this article. In calculating the duration of the residency restriction, any period of time during which the offender is incarcerated for any reason after such residency restriction is ordered shall be excluded and the duration of the restriction shall be extended by a period or periods equal to the time of such incarceration.

4. Where the court has granted a petition to extend the duration of a residency restriction pursuant to subdivisions three-a and four of section one hundred sixty-eight-o of this article, such extension may be for a period of up to five years.

§ 14. Paragraph (a) of subdivision 4-a of section 65.10 of the penal law, as amended by chapter 67 of the laws of 2008, is amended to read as follows:

(a) When imposing a sentence of probation or conditional discharge upon a person convicted of an offense defined in article one hundred thirty, two hundred thirty-five or two hundred sixty-three of this chapter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section ~~[168-1]~~ one hundred sixty-eight-1 of the correction law, the court shall require, as a mandatory condition of such sentence, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in paragraph (a) of subdivision fourteen of section 220.00 of this chapter, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her probation officer or the court and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for the limited purposes authorized by the probation officer or the court and superintendent or chief officer. Nothing in this subdivision shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender.

§ 15. Subdivision 14 of section 259-c of the executive law, as amended by section 38-b of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

14. notwithstanding any other provision of law to the contrary, where a person serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-1 of the correction law, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in paragraph (a) of subdivision four-

1 teen of section 220.00 of the penal law, or any other facility or insti-
2 tution primarily used for the care or treatment of persons under the age
3 of eighteen while one or more of such persons under the age of eighteen
4 are present, provided however, that when such sentenced offender is a
5 registered student or participant or an employee of such facility or
6 institution or entity contracting therewith or has a family member
7 enrolled in such facility or institution, such sentenced offender may,
8 with the written authorization of his or her parole officer and the
9 superintendent or chief administrator of such facility, institution or
10 grounds, enter such facility, institution or upon such grounds for the
11 limited purposes authorized by the parole officer and superintendent or
12 chief officer. Nothing in this subdivision shall be construed as
13 restricting any lawful condition of supervision that may be imposed on
14 such sentenced offender.

15 § 16. The opening paragraph of subdivision 4 of section 530.13 of the
16 criminal procedure law, as amended by chapter 240 of the laws of 2015,
17 is amended to read as follows:

18 Upon sentencing on a conviction for any offense, where the court has
19 not issued an order of protection pursuant to section 530.12 of this
20 article, the court may, in addition to any other disposition, including
21 a conditional discharge or youthful offender adjudication, enter an
22 order of protection. Where a temporary order of protection was issued,
23 the court shall state on the record the reasons for issuing or not issu-
24 ing an order of protection. The duration of such an order shall be fixed
25 by the court and; (A) in the case of a felony conviction, shall not
26 exceed the greater of: (i) eight years from the date of such sentencing,
27 except where the sentence is or includes a sentence of probation on a
28 conviction for a felony sexual assault, as provided in subparagraph
29 (iii) of paragraph (a) of subdivision three of section 65.00 of the
30 penal law, in which case, ten years from the date of such sentencing, or
31 (ii) eight years from the date of the expiration of the maximum term of
32 an indeterminate or the term of a determinate sentence of imprisonment
33 actually imposed; or (B) in the case of a conviction for a class A
34 misdemeanor, shall not exceed the greater of: (i) five years from the
35 date of such sentencing, except where the sentence is or includes a
36 sentence of probation on a conviction for a misdemeanor sexual assault,
37 as provided in subparagraph (ii) of paragraph (b) of subdivision three
38 of section 65.00 of the penal law, in which case, six years from the
39 date of such sentencing or (ii) five years from the date of the expira-
40 tion of the maximum term of a definite or intermittent term actually
41 imposed; or (C) in the case of a conviction for any other offense, shall
42 not exceed the greater of: (i) two years from the date of sentencing, or
43 (ii) two years from the date of the expiration of the maximum term of a
44 definite or intermittent term actually imposed, provided, however, that
45 in the case of a conviction for an offense for which registration as a
46 sex offender is required pursuant to subdivision two or three of section
47 one hundred sixty-eight-a of the correction law, and the victim of such
48 offense was under the age of eighteen at the time of such offense, the
49 duration of an order of protection issued pursuant to this subdivision
50 may be, but shall not exceed, the greater of the applicable duration
51 provided for in the foregoing provisions of this subdivision or until
52 the victim of such offense attains the age of eighteen. For purposes of
53 determining the duration of an order of protection entered pursuant to
54 this subdivision, a conviction shall be deemed to include a conviction
55 that has been replaced by a youthful offender adjudication. In addition
56 to any other conditions such an order may require that the defendant:

§ 17. The opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law, as amended by chapter 9 of the laws of 2011, is amended to read as follows:

Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing, provided, however, that in the case of a conviction for an offense for which registration as a sex offender is required pursuant to subdivision two or three of section one hundred sixty-eight-a of the correction law, and the victim of such offense was under the age of eighteen at the time of such offense, the duration of an order of protection issued pursuant to this subdivision may be, but shall not exceed, the greater of the applicable duration provided for in the foregoing provisions of this subdivision or until the victim of such offense attains the age of eighteen. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

§ 18. No municipal corporation, as defined in section 2 of the general municipal law, shall, on or after the effective date of the chapter of the laws of 2021 that created this section, enact any local law, ordinance, code, rule or regulation requiring a sex offender, as such term is defined by section 168-a of the correction law, to comply with a residency restriction. The provisions of this act shall invalidate and preempt any such local law, ordinance, code, rule or regulation enacted after the effective date of the chapter of the laws of 2021 that added this section.

§ 19. The provisions of this act shall preempt and invalidate any local law, ordinance, code, rule or regulation enacted before the effective date of the chapter of the laws of 2021 that added this section requiring a sex offender, as such term is defined by section 168-a of the correction law, to comply with a residency restriction, except that nothing in this act shall preclude any local probation department from enforcing any lawful condition of probation that may be imposed on a sentenced offender.

§ 20. The district attorney may file a petition to seek the imposition of a residency restriction for: (i) a sex offender classified as a level 2 or 3 offender who stands convicted of a felony which requires registration pursuant to article 6-C of the correction law and who is at liberty on the effective date of this act; and (ii) a sex offender who was convicted of a felony which requires registration pursuant to article 6-C of the correction law prior to the effective date of this act and is incarcerated in a state or local correctional facility on the effective date of this act and is classified as a level 2 or 3 offender.

1 A petition filed pursuant to paragraph (i) of this section shall be
2 filed with the sentencing court or the court which made the determi-
3 nation regarding the level of notification of such offender within one
4 year of the effective date of this act. A petition filed pursuant to
5 paragraph (ii) of this section shall be filed with the sentencing court
6 or the court which made the determination regarding the level of notifi-
7 cation of such offender within one year of the release of such offender
8 from incarceration. The petition shall set forth the reasons for seeking
9 the residency restriction and the district attorney shall bear the
10 burden, by clear and convincing evidence, of proving the facts support-
11 ing the imposition of a residency restriction. Upon receipt of a peti-
12 tion submitted pursuant to this section, the court shall proceed in a
13 manner consistent with subdivision 4 of section 168-o of the correction
14 law. Applying the guidelines established in subdivision 5-a of section
15 168-1 of the correction law, the court shall determine whether to impose
16 a residency restriction on the offender named in the petition pursuant
17 to section 168-w of the correction law. In the event that the district
18 attorney's petition is granted, the sex offender may appeal as of right
19 from the order, pursuant to the provisions of articles 55, 56 and 57 of
20 the civil practice law and rules. Where counsel has been assigned to
21 represent the offender upon the ground that he or she is financially
22 unable to retain counsel, that assignment shall be continued throughout
23 the pendency of the appeal, and the person may proceed as a poor person,
24 pursuant to article 18-B of the county law.

25 § 21. This act shall take effect immediately, provided that the amend-
26 ments to the opening paragraph of subdivision 4 of section 530.13 of the
27 criminal procedure law made by section sixteen of this act shall be
28 subject to the expiration and reversion of such paragraph pursuant to
29 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
30 date the provisions of section seventeen of this act shall take effect.