STATE OF NEW YORK

3388

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the correction law, in relation to creating the drug dealer registration act

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

Section 1. The correction law is amended by adding a new article 6-D to read as follows:

ARTICLE 6-D
DRUG DEALER REGISTRATION ACT

Section 169. Short title.
169-a. Definitions.
169-b. Duties of the division; registration information.
169-c. Drug dealer; relocation; notification.
169-d. Duties of the court.
169-e. Discharge of drug dealer from correctional facility; duties of official in charge.
169-f. Duty to register and to verify.
169-g. Prior convictions; duty to inform and register.
169-h. Duration of registration and verification.
169-i. Registration and verification requirements.
169-j. Notification of local law enforcement agencies of change of address.
169-k. Registration for change of address from another state.
169-l. Board of examiners of drug dealers.
169-m. Review.
169-n. Judicial determination.
169-o. Petition for relief or modification.
169-p. Special telephone number.
169-q. Subdirectory; internet posting.
169-r. Immunity from liability.

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

LBD02030-01-3

169-s. Annual report.
169-t. Penalty.
169-u. Unauthorized release of information.
169-v. Prohibition of employment on motor vehicles engaged in retail sales of frozen desserts.
169-w. Separability.

§ 169. Short title. This article shall be known and may be cited as the "Drug Dealer Registration Act".

§ 169-a. Definitions. As used in this article, the following definitions apply:

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

2. "Drug offense" means a conviction of or a conviction for an attempt to commit any of the provisions of section 220.31, 220.34, 220.39, 220.41, 220.43, 220.44, 220.48, 220.65, 220.73, 220.74, 220.75 or 220.77 of article two hundred twenty of the penal law.

3. "Law enforcement agency having jurisdiction" means: (a) (i) the chief law enforcement officer in the village, town or city in which the dealer expects to reside upon his or her discharge, probation, parole, release to post-release supervision or upon any form of state or local conditional release; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which the dealer expects to reside; or (iii) if there be no chief enforcement officer in such village, town, city or county, the division of state police and (b) in the case of a drug dealer who is or expects to be employed by, enrolled in, attending or employed, whether for compensation or not, at an institution of higher education, (i) the chief law enforcement officer in the village, town or city in which such institution is located; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which such institution is located; or (iii) if there be no chief law enforcement officer in such village, town, city or county, the division of state police; and (iv) if such institution operates or employs a campus law enforcement or security agency, the chief of such agency and (c) in the case of a drug dealer who expects to reside within a state park or on other land under the jurisdiction of the office of parks, recreation and historic preservation, the state regional park police.

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

5. "Board" means the "board of examiners of drug dealers" established pursuant to section one hundred sixty-nine-l of this article.

6. "Probation" means a sentence of probation imposed pursuant to article sixty-five of the penal law and shall include a sentence of imprisonment imposed in conjunction with a sentence of probation.

§ 169-b. 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 drug dealer'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. For a drug dealer given a level three designation, the division shall, during the period of registration, update such photograph once each year. For a drug dealer given a level one or level two designation, the division shall, during the period of registration, update such photograph once every three years. The division shall notify the drug dealer by mail of the duty to appear and be photographed at the specified law enforcement agency having jurisdiction. Such notification shall be mailed at least thirty days and not more than sixty days before the photograph is required to be taken pursuant to subdivision two of section one hundred sixty-nine-f of this article.

(c) A description of the offense for which the drug dealer was convicted, the date of conviction and the sentence imposed including the type of assigned supervision and the length of time of such supervision.

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

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

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

(b) The division shall also make registry information available to: (i) the department of health, to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subdivision seven of section twenty-five hundred ten of the public health law, paragraph (e) of subdivision four of section three hundred sixty-five-a of the social services law, and subdivision one of section two hundred forty-one of the elder law; (ii) the department of financial services to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subsection (b-1) of section four thousand three hundred twenty-two and subsection (d-1) of section four thousand three hundred twenty-six of the insurance law; and (iii) a court, to enable the court to promptly comply with the provisions of paragraph (a-1) of subdivision one of section two hundred forty of the domestic relations law, subdivision (e) of section six hundred fifty-one of the family court act, and subdivision (g) of section 81.19 of the mental hygiene law.

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

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

3. The division shall develop a standardized registration form to be made available to the appropriate authorities and promulgate rules and regulations to implement the provisions of this section. Such form shall

be written in clear and concise language and shall advise the drug dealer of his or her duties and obligations under this article.

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

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

6. The division shall also establish a subdirectory pursuant to section one hundred sixty-nine-q of this article.

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

8. The division shall charge a fee of ten dollars each time a drug dealer registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education as required by subdivision four of section one hundred sixty-nine-f of this article. The fee shall be paid to the division by the drug dealer. The state comptroller is hereby authorized to deposit such fees into the general fund.

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

10. The division shall make registry information available to municipal housing authorities to enable such authorities to identify persons ineligible to reside in public housing. The division shall, at least monthly, release to each municipal housing authority information about drug dealers with a home address and/or expected place of domicile within the corresponding municipality. The division may promulgate rules and regulations relating to procedures for the release of information in the registry to such authorities.

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

2. In the case of any drug dealer on probation, it shall be the duty of the drug dealer's probation officer to notify the division within forty-eight hours of the new place of residence on a form provided by the division. If such drug dealer changes the status of his or her

enrollment, attendance, employment or residence at any institution of higher education while on probation, such notification of the change of status shall be sent by the drug dealer's probation officer within forty-eight hours to the division on a form provided by the division.

3. In the case in which any drug dealer 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 drug dealer's fingerprints and photograph and a summary of his or her criminal record.

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

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

2. Any drug dealer, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such drug dealer shall register with the division on a form prepared by the division. The court shall require the drug dealer to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the drug dealer expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed. The court shall give one copy of the form to the drug dealer and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the drug dealer of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. 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 dealer (risk of repeat offense is high), a level 2 dealer (risk of repeat offense is moderate), or a level 1 dealer (risk of repeat offense is low), which will determine how long you must register as a drug dealer 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 drug dealer 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. If the drug dealer applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the drug dealer in the underlying criminal action, the court shall determine whether the dealer is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the drug dealer pursuant to article eighteen-B of the county law. Where the court orders a drug dealer released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such drug dealer violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

3. For drug dealers released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-nine-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-nine-l of this article. At least fifteen days prior to the determination proceeding, the district attorney shall provide to the court and the drug dealer a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the drug dealer 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. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the drug dealer or the district attorney to obtain materials relevant to the determinations from 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 drug dealer and the district attorney and the court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be re-litigated. 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 drug dealer upon the ground that the drug dealer 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.

4. If a drug dealer, 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 three of this section.

§ 169-e. Discharge of drug dealer from correctional facility; duties of official in charge. 1. Any drug dealer, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the drug dealer to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the drug dealer expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not. The facility shall give one copy of the form to the drug dealer, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the drug dealer a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the drug dealer and sent to the division by the facility at least ten days prior to the drug dealer's release or discharge.

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

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

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

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

(c) If the drug dealer has been given a level two or three designation, such dealer shall sign the verification form, and state that he or she still is employed at the address last reported to the division.

(d) If the drug dealer has been given a level three designation, he or she shall personally appear at the law enforcement agency having juris-

diction within twenty days of the first anniversary of the drug dealer's initial registration and every year thereafter during the period of registration for the purpose of providing a current photograph of such dealer. The law enforcement agency having jurisdiction shall photograph the drug dealer and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such drug dealer is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(e) If the drug dealer has been given a level one or level two designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the third anniversary of the drug dealer's initial registration and every three years thereafter during the period of registration for the purpose of providing a current photograph of such dealer. The law enforcement agency having jurisdiction shall photograph the drug dealer and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such drug dealer is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

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

(g) If the drug dealer, to whom a notice has been mailed at the last reported address pursuant to paragraph (b) of subdivision one of section one hundred sixty-nine-b of this article, fails to personally appear at the law enforcement agency having jurisdiction, as provided in paragraph (d) or (e) of this subdivision, within twenty days of the anniversary of the drug dealer's initial registration, or an alternate later date scheduled by the law enforcement agency having jurisdiction, he or she shall be in violation of this section. The duty to personally appear for such updated photograph shall be temporarily suspended during any period in which the drug dealer is confined in any hospital or institution, and such drug dealer shall personally appear for such updated photograph no later than ninety days after release from such hospital or institution, or an alternate later date scheduled by the law enforcement agency having jurisdiction.

3. The duty to register under the provisions of this article shall not be applicable to any drug dealer whose conviction was reversed upon appeal or who was pardoned by the governor.

4. Any drug dealer shall register with the division no later than ten calendar days after any change of address, or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education. A fee of ten dollars, as authorized by subdivision eight of section one hundred sixty-nine-b of this article, shall be submitted by the drug dealer each time such dealer registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education. Any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status.

§ 169-g. Prior convictions; duty to inform and register. 1. The department or office of probation and correctional alternatives in

accordance with risk factors pursuant to section one hundred sixty-nine-l of this article shall determine the duration of registration and notification for every drug dealer who on the effective date of this article is then on community supervision or probation for an offense provided for in subdivision two of section one hundred sixty-nine-a of this article.

2. Every drug dealer who on the effective date of this article is then on community supervision or probation for an offense provided for in subdivision two of section one hundred sixty-nine-a of this article shall within ten calendar days of such determination register with his parole or probation officer. On each anniversary of the drug dealer's initial registration date thereafter, the provisions of section one hundred sixty-nine-f of this article shall apply. Any drug dealer 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 drug dealer 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 drug dealer according to the requirements imposed by this article. A parole or probation officer shall give one copy of the form to the drug dealer and shall, within three calendar days, send two copies electronically or otherwise to the department which shall forward one copy electronically or otherwise to the law enforcement agency having jurisdiction where the drug dealer resides upon his or her community supervision, probation, or local conditional release.

4. A petition for relief from this section is permitted to any drug dealer required to register while released to community supervision or probation pursuant to section one hundred sixty-nine-o of this article.

§ 169-h. Duration of registration and verification. 1. The duration of registration and verification for a drug dealer shall be annually for a period of twenty years from the initial date of registration.

2. Any drug dealer having been designated a level three risk shall also personally verify his or her address every ninety calendar days with the local law enforcement agency having jurisdiction where the dealer resides.

§ 169-i. Registration and verification requirements. Registration and verification as required by this article shall consist of a statement in writing signed by the drug dealer giving the information that is required by the division and the division shall enter the information into an appropriate electronic data base or file.

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

2. Upon receipt of change of address information, the local law enforcement agency having jurisdiction of the new place of residence shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-nine-l of this article.

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

4. Upon receipt of a change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a drug dealer required to register under this article, the division shall

notify each law enforcement agency having jurisdiction which is affected by such change.

5. Upon receipt of change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a drug dealer required to register under this article, each law enforcement agency having jurisdiction shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-nine-l of this article.

§ 169-k. Registration for change of address from another state. 1. A drug dealer who has been convicted of an offense under subdivision two of section one hundred sixty-nine-a of this article and requires registration shall notify the division of the new address no later than ten calendar days after such drug dealer establishes residence in this state.

2. The division shall advise the board that the drug dealer has established residence in this state. The board shall determine whether the drug dealer is required to register with the division. If it is determined that the drug dealer is required to register, the division shall notify the drug dealer of his or her duty to register under this article and shall require the drug dealer 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 drug dealer. The division shall obtain on such form the address where the drug dealer expects to reside within the state and the drug dealer 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 drug dealer expects to reside within this state. No later than thirty days prior to the board making a recommendation, the drug dealer 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-nine-l 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-nine-l 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 drug dealer and to the drug dealer. It shall be the duty of the county court or supreme court in the county of residence of the drug dealer, applying the guidelines established in subdivision five of section one hundred sixty-nine-l of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-nine-l of this article. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the drug dealer, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and drug dealer 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 dealer (risk of repeat offense is high), a level 2 dealer (risk of repeat offense is moderate), or a level 1 dealer (risk of repeat offense is low), which will determine how long you must register as a drug dealer 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 drug dealer 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 drug dealer on which the drug dealer may apply for assignment of counsel. If the drug dealer applies for assignment of counsel and the court finds that the dealer is financially unable to retain counsel, the court shall assign counsel to represent the drug dealer 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 drug dealer a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the drug dealer 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-nine-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-nine-l of this article. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the drug dealer or the district attorney to obtain materials relevant to the determinations from the state board of examiners of drug dealers 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 relevant materials and evidence submitted by the drug dealer 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 re-litigated. 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 drug dealer upon the ground that the drug dealer 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. The division shall undertake an information campaign designed to provide information to officials and appropriate individuals in other states and United States possessions concerning the notification proce-

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

4. If a drug dealer, 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.

§ 169-l. Board of examiners of drug dealers. 1. There shall be a board of examiners of drug dealers which shall possess the powers and duties hereinafter specified. Such board shall consist of five members appointed by the governor. All members shall be employees of the department and shall be experts in the field of the behavior and treatment of drug dealers. 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 drug dealer 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 drug dealer served the maximum term;

(ii) whether the drug dealer sold drugs to a minor;

(iii) the amount of drugs sold; and

(iv) the age of the drug dealer at the time of the commission of the first drug sale;

(b) other criminal history factors to be considered in determining risk, including 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 drug dealer is under supervision or residing in a home situation that provides guidance and supervision; and

(d) recent behavior, including behavior while confined.

6. The guidelines shall be applied by the board to make a recommendation to the sentencing court which shall be confidential and shall not be available for public inspection, providing for one of the following three levels of notification depending upon the degree of the risk of re-offense by the drug dealer.

(a) If the risk of repeat offense is low, a level one designation shall be given to such drug dealer. In such case the law enforcement

agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which may include a photograph and description of the dealer and which may include the name of the drug dealer, approximate address based on the drug dealer's zip code, background information including the dealer's crime of conviction, modus of operation, and the name and address of any institution of higher education at which the drug dealer is enrolled, attends, is employed or resides.

(b) If the risk of repeat offense is moderate, a level two designation shall be given to such drug dealer. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the dealer and which may include the exact name and any aliases used by the drug dealer, exact address, background information including the dealer's crime of conviction, mode of operation, and the name and address of any institution of higher education at which the drug dealer is enrolled, attends, is employed or resides.

(c) If the risk of repeat offense is high and there exists a threat to the public safety a level three designation shall be given to such drug dealer. In such case, the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the dealer and which may include the drug dealer's exact name and any aliases used by the dealer, exact address, address of the dealer's place of employment, background information including the dealer's crime of conviction, mode of operation, and the name and address of any institution of higher education at which the drug dealer is enrolled, attends, is employed or resides.

7. Upon request by the court, pursuant to section one hundred sixty-nine-o of this article, the board shall provide an updated report pertaining to the drug dealer petitioning for relief of the duty to register or for a modification of his or her level of notification.

8. A failure by a state or local agency or the board to act or by a court to render a determination within the time period specified in this article shall not affect the obligation of the drug dealer to register or verify under this article nor shall such failure prevent a court from making a determination regarding the drug dealer's level of notification and whether such dealer is required by law to be registered for a period of twenty years or for life. Where a court is unable to make a determination prior to the date scheduled for a drug dealer's discharge, parole, release to post-release supervision or release, it shall adjourn the hearing until after the dealer is discharged, paroled, released to post-release supervision or released, and shall then expeditiously complete the hearing and issue its determination.

§ 169-m. Review. Notwithstanding any other provision of law to the contrary, any state or local correctional facility, hospital or institution, district attorney, law enforcement agency, probation department, state board of parole, court or child protective agency shall forward relevant information pertaining to a drug dealer to be discharged, paroled, released to post-release supervision 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 subdi-

vision six of section one hundred sixty-nine-l of this article within sixty days of receipt of the information. Information may include, but may not be limited to all or a portion of the arrest file, prosecutor's file, probation or parole file, child protective file, court file, commitment file, medical file and treatment file pertaining to such person. Such person shall be permitted to submit to the board any information relevant to the review. Upon application of the drug dealer or the district attorney, the court shall seal any portion of the board's file pertaining to the drug dealer that contains material that is confidential under any state or federal law; provided, however, that in any subsequent proceedings in which the drug dealer who is the subject of the sealed record is a party and which requires the board to provide a recommendation to the court pursuant to this article, such sealed record shall be available to the drug dealer, the district attorney, the court and the attorney general where the attorney general is a party, or represents a party, in the proceeding.

§ 169-n. Judicial determination. 1. Applying the guidelines established in subdivision five of section one hundred sixty-nine-l of this article, the sentencing court shall make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-nine-l of this article. Both determinations of the sentencing court shall be made thirty calendar days prior to discharge, parole or release.

2. No later than thirty days prior to the board's recommendation, the drug dealer 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. Upon receipt of the board's recommendation, the sentencing court shall determine whether the drug dealer was previously found to be eligible for assigned counsel in the underlying case. Where such a finding was previously made, the court shall assign counsel to represent the dealer, pursuant to article eighteen-B of the county law. At least twenty days prior to the determination proceeding, the sentencing court shall notify the district attorney, the drug dealer and the drug dealer's counsel, in writing, of the date of the determination proceeding and shall also provide the district attorney, the drug dealer and the drug dealer's counsel 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 dealer (risk of repeat offense is high), a level 2 dealer (risk of repeat offense is moderate), or a level 1 dealer (risk of repeat offense is low), which will determine how long you must register as a drug dealer 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 written notice to the drug dealer shall also advise the dealer that he or she has a right to a hearing prior to the court's determination, and that he or she has the right to be represented by counsel at the hearing. If counsel has been assigned to represent the dealer at the determination proceeding, the notice shall also provide the name, address and telephone number of the assigned counsel. Where counsel has not been assigned, the notice shall advise the drug dealer that counsel will be appointed if he or she is

financially unable to retain counsel, and a returnable form shall be enclosed in the court's notice to the drug dealer on which the drug dealer may apply for assignment of counsel. If the drug dealer applies for assignment of counsel and the court finds that the dealer is financially unable to retain counsel, the court shall assign counsel to represent the drug dealer 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 drug dealer a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the drug dealer 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. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the drug dealer or the district attorney to obtain materials relevant to the determinations from the state board of examiners of drug dealers 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 relevant materials and evidence submitted by the drug dealer and the district attorney and the recommendation and any materials submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry 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 drug dealer upon the ground that the drug dealer 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. 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-nine-q of this article.

4. Upon the reversal of a conviction of a drug offense defined in subdivision two of section one hundred sixty-nine-a of this article, the appellate court shall remand the case to the lower court for entry of an order directing the expungement of any records required to be kept herein.

5. If a drug dealer, 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 three of this section.

§ 169-o. Petition for relief or modification. 1. Any drug dealer who is classified as a level two risk, who is required to register or verify pursuant to this article and who has been registered for a minimum period of thirty years may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court or by the court which made the determination regarding duration of registration and level of notification. The drug dealer shall bear the burden of proving by clear and convincing evidence that his or her risk of repeat offense is no longer necessary. 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. Such a petition shall not be considered more than once every two years. In the event that the drug dealer's petition for relief is granted, the district attorney 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 drug dealer upon the ground that the drug dealer is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

2. Any drug dealer required to register or verify pursuant to this article may petition the sentencing court or the court which made the determination regarding the level of notification for an order modifying the level of notification. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The drug dealer shall bear the burden of proving the facts supporting the requested modification by clear and convincing evidence. Such a petition shall not be considered more than annually. In the event that the drug dealer's petition to modify the level of notification is granted, the district attorney 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 drug dealer upon the ground that the drug dealer 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. The district attorney may file a petition to modify the level of notification for a drug dealer with the sentencing court or with the court which made the determination regarding the level of notification, where the drug dealer (a) has been convicted of a new crime, or there has been a determination after a proceeding pursuant to section 410.70 of the criminal procedure law or section two hundred fifty-nine-i of the executive law that the drug dealer has violated one or more conditions imposed as part of a sentence of a conditional discharge, probation, parole or post-release supervision for a designated crime, and (b) the conduct underlying the new crime or the violation is of a nature that indicates an increased risk of a repeat drug offense. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The district attorney shall bear the burden of proving the facts supporting the requested modification, by clear and convincing evidence. In the event that the district attorney's petition is granted, the drug dealer 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 dealer upon the ground that he or she is

financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may proceed as a poor person, pursuant to article eighteen-B of the county law.

4. Upon receipt of a petition submitted pursuant to subdivision one, two or three of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the drug dealer and shall provide a copy of the petition to the other party. The court shall also advise the drug dealer that he or she has the right to be represented by counsel at the hearing and 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 drug dealer on which the drug dealer may apply for assignment of counsel. If the drug dealer applies for assignment of counsel and the court finds that the dealer is financially unable to retain counsel, the court shall assign counsel to represent the dealer, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated recommendation the board shall notify the drug dealer and his or her counsel that the dealer's case is under review and he or she is permitted to submit to the board any information relevant to the review. The board's updated recommendation on the drug dealer shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a drug dealer, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the drug dealer, the drug dealer's counsel and the district attorney and notify them, in writing, of the date set by the court for a hearing on the petition. After reviewing the recommendation received from the board and any relevant materials and evidence submitted by the drug dealer and the district attorney, the court may grant or deny the petition. The court may also consult with the victim prior to making a determination on the petition. The court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. If the petition is granted, it shall be the obligation of the court to submit a copy of its order 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.

§ 169-p. Special telephone number. 1. Pursuant to section one hundred sixty-nine-b of this article, the division shall also operate a telephone number that members of the public may call free of charge and inquire whether a named individual required to register pursuant to this article is listed. The division shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the relevant information according to risk as described in subdivision six of section one hundred sixty-nine-l 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.

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

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

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

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

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

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

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

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

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

3. (a) The division shall establish a program allowing non-profit and not-for-profit youth services organizations to pre-register with the division for use of the telephone number. Pre-registration shall include the identification of up to two officials of the organization who may call the telephone number and obtain information on behalf of the organization. A pre-registered certificate issued under this subdivision shall be valid for two years, unless earlier revoked by the division for good cause shown. No fee shall be charged to an applicant for the issuance of a pre-registered certificate pursuant to this subdivision.

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

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

4. Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the telephone number, the attorney general, any district attorney or any person aggrieved by the misuse of the number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing reme-

dies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law. Such person or group of persons shall be subject to a fine of not less than five hundred dollars and not more than one thousand dollars.

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

(a) number of calls received;

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

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

(d) number of persons listed; and

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

§ 169-q. Subdirectory; internet posting. 1. The division shall maintain a subdirectory of level two and three drug dealers. The subdirectory shall include the exact address, address of the dealer's place of employment and photograph of the drug dealer along with the following information, if available: name, physical description, age and distinctive markings. Background information including all of the drug dealer's crimes of conviction that require him or her to register pursuant to this article, the name and address of any institution of higher education at which the drug dealer is enrolled, attends, is employed or resides and a description of special conditions imposed on the drug dealer shall also be included. The subdirectory shall have drug dealer listings categorized by county and zip code. 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.

§ 169-r. 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, unless it is shown that such official, employee or agency acted with gross negligence or in bad 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 unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.

§ 169-s. 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.

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

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

§ 169-v. Prohibition of employment on motor vehicles engaged in retail sales of frozen desserts. No person required to maintain registration under this article (drug dealer registration act) shall operate, be employed on or dispense goods for sale at retail on a motor vehicle engaged in retail sales of frozen desserts as defined in subdivision thirty-seven of section three hundred seventy-five of the vehicle and traffic law.

§ 169-w. Separability. If any section of this article, or part thereof shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.