STATE OF NEW YORK

8580

IN ASSEMBLY

January 12, 2024

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

AN ACT to amend the correction law, in relation to allowing discretion in requiring sex offender registration for persons convicted of certain sex offenses in other states and to amend the definition of a sexually violent offense

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

Section 1. Subparagraph (iii) of paragraph (d) of subdivision 2 of section 168-a of the correction law, as amended by chapter 232 of the laws of 2008, is amended to read as follows:

(iii) any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, 18 U.S.C. 2260, 18 U.S.C. 2422(b), 18 U.S.C. 2423, or 18 U.S.C. 2425, provided that the elements of such crime of conviction are substantially the same as those which are a part of such offense as of the date on which this subparagraph takes effect**, or (iv) notwithstanding any other law, a person convicted in another jurisdiction of an offense similar to section twenty-three hundred seven of the public health law or any offense based on exposure to a transmissible disease or virus, or former section 130.38 of the penal law relating to consensual sodomy, or section 230.00 of the penal law, or former section 240.37 of the penal law relating to loitering for the purposes of engaging in a prostitution offense who is required to register in the jurisdiction of conviction shall not be required to register in New York unless the out-of-state offense, based on the elements of the conviction offense or proven or stipulated facts in the record of conviction, contains all of the elements of a registerable New York offense described in paragraph (a), (b) or (c) of this subdivision**.

§ 2. Paragraph (b) of subdivision 3 of section 168-a of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

(b) a conviction of an offense in any other jurisdiction which includes all of the essential elements of any such felony provided for in paragraph (a) of this subdivision [~~or conviction of a felony in any~~

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

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~~other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred~~].

§ 3. Paragraph (a) of subdivision 1 of section 168-d of the correction law, as amended by chapter 69 of the laws of 2003, is amended to read as follows:

(a) Except as provided in paragraphs (b) and (c) of this subdivision, upon conviction of any of the offenses set forth in subdivision two or three of section one hundred sixty-eight-a of this article the court shall certify that the person is a sex offender and shall include the certification in the order of commitment, if any, and judgment of conviction, except as provided in **subparagraph (iv) of paragraph (d) of subdivision two of section one hundred sixty-eight-a of this article or** paragraph (e) of subdivision two of section one hundred sixty-eight-a of this article. The court shall also advise the sex offender of his or her duties under this article. Failure to include the certification in the order of commitment or the judgment of conviction shall not relieve a sex offender of the obligations imposed by this article.

§ 4. Subdivision 4 of section 168-o of the correction law is renumbered subdivision 5 and a new subdivision 4 is added to read as follows:

4. Any sex offender required to register pursuant to subparagraph (ii) of paragraph (d) of subdivision two of section one hundred sixty-eight-a of this article prior to the effective date of this subdivision may petition the court which made the determination regarding registration or the level of notification for an order removing the requirement to register if such registration was based on an offense described in subparagraph (iv) of paragraph (d) of subdivision two of section one hundred sixty-eight-a of this article. The petition shall set forth the reasons for seeking such determination. The sex offender shall bear the burden of proving the facts supporting the requested lifting of the requirement by clear and convincing evidence. Such a petition shall not be considered more than annually. In the event that the sex offender's petition to lift the registration requirement 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 sex offender upon the ground that the sex offender is financially unable to retain counsel, such 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.

§ 5. Subdivision 5 of section 168-o of the correction law, as added by chapter 453 of the laws of 1999 and as renumbered by section four of this act, is amended to read as follows:

5. Upon receipt of a petition submitted pursuant to subdivision one, two [~~or~~]**,** three**, or four** of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the sex offender and shall provide a copy of the petition to the other party. The court shall also advise the sex offender 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 sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated

recommendation the board shall notify the sex offender and his or her counsel that the offender'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 sex offender shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a sex offender, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the sex offender, the sex offender'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 sex offender 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.

§ 6. Subdivision 5 of section 168-n of the correction law, as amended by chapter 453 of the laws of 1999, is amended to read as follows:

5. Upon the reversal of a conviction of a sexual offense defined in paragraphs (a) and (b) of subdivision two or three of section one hundred sixty-eight-a of this article, **or a determination to lift the registration requirement made pursuant to subdivision four of section one hundred sixty-eight-o 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.

§ 7. This act shall take effect immediately.