

STATE OF NEW YORK

4148

2025-2026 Regular Sessions

IN SENATE

February 3, 2025

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and 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

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

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

53 3. For sex offenders released on probation or discharged upon payment
54 of a fine, conditional discharge or unconditional discharge, it shall be
55 the duty of the court applying the guidelines established in subdivision
56 five of section one hundred sixty-eight-1 of this article to determine

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

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

47 2. The division shall advise the board that the sex offender has
48 established residence in this state. The board shall determine whether
49 the sex offender is required to register with the division. If it is
50 determined that the sex offender is required to register, the division
51 shall notify the sex offender of [~~his or her~~] such offender's duty to
52 register under this article and shall require the sex offender to sign a
53 form as may be required by the division acknowledging that the duty to
54 register and the procedure for registration has been explained to the
55 sex offender. The division shall obtain on such form the address where
56 the sex offender expects to reside within the state and the sex offender

1 shall retain one copy of the form and send two copies to the division
2 which shall provide the information to the law enforcement agency having
3 jurisdiction where the sex offender expects to reside within this state.
4 No later than thirty days prior to the board making a recommendation,
5 the sex offender shall be notified that [~~his or her~~] their case is under
6 review and that [~~he or she~~] such offender is permitted to submit to the
7 board any information relevant to the review. After reviewing any infor-
8 mation obtained, and applying the guidelines established in subdivision
9 five of section one hundred sixty-eight-1 of this article, the board
10 shall within sixty calendar days make a recommendation regarding the
11 level of notification pursuant to subdivision six of section one hundred
12 sixty-eight-1 of this article [~~and~~], whether such sex offender shall be
13 designated a sexual predator, sexually violent offender, or predicate
14 sex offender as defined in subdivision seven of section one hundred
15 sixty-eight-a of this article and, when determining the level of notifi-
16 cation and applying the guidelines established in subdivision five-a of
17 section one hundred sixty-eight-1 of this article, whether a sex offen-
18 der, classified as a level 2 or level 3 offender who stands convicted of
19 a felony which requires registration pursuant to this article, will be
20 subject to a residency restriction pursuant to section one hundred
21 sixty-eight-w of this article. This recommendation shall be confiden-
22 tial and shall not be available for public inspection. It shall be
23 submitted by the board to the county court or supreme court and to the
24 district attorney in the county of residence of the sex offender and to
25 the sex offender. It shall be the duty of the county court or supreme
26 court in the county of residence of the sex offender, applying the
27 guidelines established in subdivision five of section one hundred
28 sixty-eight-1 of this article, to determine the level of notification
29 pursuant to subdivision six of section one hundred sixty-eight-1 of this
30 article [~~and~~], whether such sex offender shall be designated a sexual
31 predator, sexually violent offender, or predicate sex offender as
32 defined in subdivision seven of section one hundred sixty-eight-a of
33 this article and, when determining the level of notification and apply-
34 ing the guidelines established in subdivision five-a of section one
35 hundred sixty-eight-1 of this article, whether a sex offender, classi-
36 fied as a level 2 or level 3 offender who stands convicted of a felony
37 which requires registration pursuant to this article, will be subject to
38 a residency restriction pursuant to section one hundred sixty-eight-w of
39 this article. At least thirty days prior to the determination proceed-
40 ing, such court shall notify the district attorney and the sex offender,
41 in writing, of the date of the determination proceeding and the court
42 shall also provide the district attorney and sex offender with a copy of
43 the recommendation received from the board and any statement of the
44 reasons for the recommendation received from the board. This notice
45 shall include the following statement or a substantially similar state-
46 ment: "This proceeding is being held to determine whether you will be
47 classified as a level 3 offender (risk of repeat offense is high), a
48 level 2 offender (risk of repeat offense is moderate), or a level 1
49 offender (risk of repeat offense is low), or whether you will be desig-
50 nated as a sexual predator, a sexually violent offender or a predicate
51 sex offender, which will determine how long you must register as a sex
52 offender and how much information can be provided to the public concern-
53 ing your registration. If you are classified as a level 2 or level 3
54 offender for a felony sex offense, the court may also determine whether
55 you will be subject to a residency restriction which may restrict where
56 you can establish your permanent residence. If you fail to appear at

1 this proceeding, without sufficient excuse, it shall be held in your
2 absence. Failure to appear may result in a longer period of registration
3 or a higher level of community notification because you are not present
4 to offer evidence or contest evidence offered by the district attorney."
5 The court shall also advise the sex offender that ~~[he or she]~~ such
6 offender has a right to a hearing prior to the court's determination,
7 that ~~[he or she]~~ such offender has the right to be represented by counsel
8 at the hearing and that counsel will be appointed if ~~[he or she is]~~
9 they are financially unable to retain counsel. A returnable form shall
10 be enclosed in the court's notice to the sex offender on which the sex
11 offender may apply for assignment of counsel. If the sex offender
12 applies for assignment of counsel and the court finds that the offender
13 is financially unable to retain counsel, the court shall assign counsel
14 to represent the sex offender pursuant to article eighteen-B of the
15 county law. If the district attorney seeks a determination that differs
16 from the recommendation submitted by the board, at least ten days prior
17 to the determination proceeding the district attorney shall provide to
18 the court and the sex offender a statement setting forth the determi-
19 nations sought by the district attorney together with the reasons for
20 seeking such determinations. The court shall allow the sex offender to
21 appear and be heard. The state shall appear by the district attorney, or
22 ~~[his or her]~~ such district attorney's designee, who shall bear the
23 burden of proving the facts supporting the determinations sought by
24 clear and convincing evidence. It shall be the duty of the court apply-
25 ing the guidelines established in subdivision five of section one
26 hundred sixty-eight-1 of this article to determine the level of notifi-
27 cation pursuant to subdivision six of section one hundred sixty-eight-1
28 of this article ~~[and]~~, whether such sex offender shall be designated a
29 sexual predator, sexually violent offender, or predicate sex offender as
30 defined in subdivision seven of section one hundred sixty-eight-a of
31 this article and, when determining the level of notification and apply-
32 ing the guidelines established by subdivision five-a of section one
33 hundred sixty-eight-1 of this article, whether a sex offender, classi-
34 fied as a level 2 or level 3 offender who stands convicted of a felony
35 which requires registration pursuant to this article, will be subject to
36 a residency restriction pursuant to section one hundred sixty-eight-w of
37 this article. Where there is a dispute between the parties concerning
38 the determinations, the court shall adjourn the hearing as necessary to
39 permit the sex offender or the district attorney to obtain materials
40 relevant to the determinations from the state board of examiners of sex
41 offenders or any state or local facility, hospital, institution, office,
42 agency, department or division. Such materials may be obtained by
43 subpoena if not voluntarily provided to the requesting party. In making
44 the determinations the court shall review any victim's statement and any
45 relevant materials and evidence submitted by the sex offender and the
46 district attorney and the recommendation and any material submitted by
47 the board, and may consider reliable hearsay evidence submitted by
48 either party, provided that it is relevant to the determinations. If
49 available, facts proven at trial or elicited at the time of a plea of
50 guilty shall be deemed established by clear and convincing evidence and
51 shall not be relitigated. The court shall render an order setting forth
52 its determinations and the findings of fact and conclusions of law on
53 which the determinations are based. A copy of the order shall be submit-
54 ted by the court to the division. Upon application of either party, the
55 court shall seal any portion of the court file or record which contains
56 material that is confidential under any state or federal statute. Either

1 party may appeal as of right from the order pursuant to the provisions
2 of articles fifty-five, fifty-six and fifty-seven of the civil practice
3 law and rules. Where counsel has been assigned to represent the sex
4 offender upon the ground that the sex offender is financially unable to
5 retain counsel, that assignment shall be continued throughout the
6 pendency of the appeal, and the person may appeal as a poor person
7 pursuant to article eighteen-B of the county law.

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

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

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

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

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

22 (d) the accessibility to supportive services, including, but not
23 limited to, locally available sex offender treatment programs that have
24 demonstrated effectiveness in reducing sex offender recidivism and
25 increasing public safety;

26 (e) the ability of the offender to find gainful and stable employment;
27 and

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

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

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

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

1 7. Upon request by the court, pursuant to section one hundred sixty-
2 eight-o of this article, the board shall provide an updated report
3 pertaining to the sex offender petitioning for relief of the duty to
4 register [~~or~~], for a modification of [~~his or her~~] such sex offender's
5 level of notification or for modification or termination of a residency
6 restriction imposed by the sentencing court.

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

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

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

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

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

55 Petition for relief or modification of level of notification and/or
56 residency restriction.

1 2-a. Any sex offender subject to a residency restriction pursuant to
2 this article may petition the court which imposed such restriction for
3 an order terminating or modifying such residency restriction. The peti-
4 tion shall set forth the reasons for seeking such modification or termi-
5 nation. The sex offender shall bear the burden of proving the facts
6 supporting the requested modification or termination by clear and
7 convincing evidence. Such a petition shall not be considered more than
8 annually. The district attorney and the sex offender may appeal as of
9 right from an order issued under this subdivision pursuant to the
10 provisions of articles fifty-five, fifty-six and fifty-seven of the
11 civil practice law and rules. Where counsel has been assigned to repre-
12 sent the sex offender upon the ground that the sex offender is finan-
13 cially unable to retain counsel, that assignment shall be continued
14 throughout the pendency of the appeal, and the person may appeal as a
15 poor person pursuant to article eighteen-B of the county law.

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

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

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

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

1 updated recommendation from the board concerning a sex offender, the
2 court shall, at least thirty days prior to ruling upon the petition,
3 provide a copy of the updated recommendation to the sex offender, the
4 sex offender's counsel and the district attorney and notify them, in
5 writing, of the date set by the court for a hearing on the petition.
6 After reviewing the recommendation received from the board and any rele-
7 vant materials and evidence submitted by the sex offender and the
8 district attorney, the court may grant or deny the petition. The court
9 may also consult with the victim prior to making a determination on the
10 petition. The court shall render an order setting forth its determi-
11 nation, and the findings of fact and conclusions of law on which the
12 determination is based. If the petition is granted, it shall be the
13 obligation of the court to submit a copy of its order to the division.
14 Upon application of either party, the court shall seal any portion of
15 the court file or record which contains material that is confidential
16 under any state or federal statute.

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

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

34 § 13. Section 168-w of the correction law, as renumbered by chapter
35 604 of the laws of 2005, is renumbered section 168-x and a new section
36 168-w is added to read as follows:

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

50 2. When the court determines that a residency restriction is necessary
51 pursuant to the provisions of this article, the court may order that the
52 sex offender be prohibited from knowingly establishing their permanent
53 residence within up to one thousand feet of any school grounds, as the
54 term is defined in paragraph (a) of subdivision fourteen of section
55 220.00 of the penal law. For the purposes of this subdivision, the term
56 permanent residence shall mean the place where the offender maintains a

1 fixed, permanent and principal home and to which such offender, whenever
2 temporarily away, intends to return. Permanent residence shall not
3 include temporary or transitional housing such as a shelter, residential
4 treatment program, or other similar temporary or transient housing.

5 3. The court shall determine the duration of the residency restriction
6 imposed pursuant to this section provided, however, that such
7 restriction shall not apply for more than ten years after the later of
8 the offender's release from jail or prison or the period or term of
9 probation, parole, conditional release or post-release supervision for
10 the offense which requires the offender to register as a sex offender
11 pursuant to this article. In calculating the duration of the residency
12 restriction, any period of time during which the offender is incarcerat-
13 ed for any reason after such residency restriction is ordered shall be
14 excluded and the duration of the restriction shall be extended by a
15 period or periods equal to the time of such incarceration.

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

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

23 (a) When imposing a sentence of probation or conditional discharge
24 upon a person convicted of an offense defined in article one hundred
25 thirty, two hundred thirty-five or two hundred sixty-three of this chap-
26 ter, or section 255.25, 255.26 or 255.27 of this chapter, and the victim
27 of such offense was under the age of eighteen at the time of such
28 offense or such person has been designated a level three sex offender
29 pursuant to subdivision six of section [~~168-1~~] one hundred sixty-eight-1
30 of the correction law, the court shall require, as a mandatory condition
31 of such sentence, that such sentenced offender shall refrain from know-
32 ingly entering into or upon any school grounds, as that term is defined
33 in paragraph (a) of subdivision fourteen of section 220.00 of this chap-
34 ter, or any other facility or institution primarily used for the care or
35 treatment of persons under the age of eighteen while one or more of such
36 persons under the age of eighteen are present, provided however, that
37 when such sentenced offender is a registered student or participant or
38 an employee of such facility or institution or entity contracting there-
39 with or has a family member enrolled in such facility or institution,
40 such sentenced offender may, with the written authorization of [~~his or~~
41 ~~her~~] such offender's probation officer or the court and the superinten-
42 dent or chief administrator of such facility, institution or grounds,
43 enter such facility, institution or upon such grounds for the limited
44 purposes authorized by the probation officer or the court and super-
45 intendent or chief officer. Nothing in this subdivision shall be
46 construed as restricting any lawful condition of supervision that may be
47 imposed on such sentenced offender.

48 § 15. Subdivision 14 of section 259-c of the executive law, as amended
49 by section 38-b of subpart A of part C of chapter 62 of the laws of
50 2011, is amended to read as follows:

51 14. notwithstanding any other provision of law to the contrary, where
52 a person serving a sentence for an offense defined in article one
53 hundred thirty, one hundred thirty-five or two hundred sixty-three of
54 the penal law or section 255.25, 255.26 or 255.27 of the penal law and
55 the victim of such offense was under the age of eighteen at the time of
56 such offense or such person has been designated a level three sex offen-

1 der pursuant to subdivision six of section one hundred sixty-eight-1 of
2 the correction law, is released on parole or conditionally released
3 pursuant to subdivision one or two of this section, the board shall
4 require, as a mandatory condition of such release, that such sentenced
5 offender shall refrain from knowingly entering into or upon any school
6 grounds, as that term is defined in paragraph (a) of subdivision four-
7 teen of section 220.00 of the penal law, or any other facility or insti-
8 tution primarily used for the care or treatment of persons under the age
9 of eighteen while one or more of such persons under the age of eighteen
10 are present, provided however, that when such sentenced offender is a
11 registered student or participant or an employee of such facility or
12 institution or entity contracting therewith or has a family member
13 enrolled in such facility or institution, such sentenced offender may,
14 with the written authorization of [~~his or her~~] their parole officer and
15 the superintendent or chief administrator of such facility, institution
16 or grounds, enter such facility, institution or upon such grounds for
17 the limited purposes authorized by the parole officer and superintendent
18 or chief officer. Nothing in this subdivision shall be construed as
19 restricting any lawful condition of supervision that may be imposed on
20 such sentenced offender.

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

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

1 provided for in the foregoing provisions of this subdivision or until
2 the victim of such offense attains the age of eighteen. For purposes of
3 determining the duration of an order of protection entered pursuant to
4 this subdivision, a conviction shall be deemed to include a conviction
5 that has been replaced by a youthful offender adjudication. In addition
6 to any other conditions such an order may require that the defendant:

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

10 Upon sentencing on a conviction for any offense, where the court has
11 not issued an order of protection pursuant to section 530.12 of this
12 article, the court may, in addition to any other disposition, including
13 a conditional discharge or youthful offender adjudication, enter an
14 order of protection. Where a temporary order of protection was issued,
15 the court shall state on the record the reasons for issuing or not issu-
16 ing an order of protection. The duration of such an order shall be fixed
17 by the court and, in the case of a felony conviction, shall not exceed
18 the greater of: (i) five years from the date of such sentencing, or (ii)
19 three years from the date of the expiration of the maximum term of an
20 indeterminate sentence of imprisonment actually imposed; or in the case
21 of a conviction for a class A misdemeanor, shall not exceed three years
22 from the date of such sentencing; or in the case of a conviction for any
23 other offense, shall not exceed one year from the date of sentencing,
24 provided, however, that in the case of a conviction for an offense for
25 which registration as a sex offender is required pursuant to subdivision
26 two or three of section one hundred sixty-eight-a of the correction law,
27 and the victim of such offense was under the age of eighteen at the time
28 of such offense, the duration of an order of protection issued pursuant
29 to this subdivision may be, but shall not exceed, the greater of the
30 applicable duration provided for in the foregoing provisions of this
31 subdivision or until the victim of such offense attains the age of eigh-
32 teen. For purposes of determining the duration of an order of
33 protection entered pursuant to this subdivision, a conviction shall be
34 deemed to include a conviction that has been replaced by a youthful
35 offender adjudication. In addition to any other conditions such an order
36 may require that the defendant:

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

44 § 19. The provisions of this act shall preempt and invalidate any
45 local law, ordinance, code, rule or regulation enacted before the effec-
46 tive date of this section requiring a sex offender, as such term is
47 defined by section 168-a of the correction law, to comply with a resi-
48 dency restriction, except that nothing in this act shall preclude any
49 local probation department from enforcing any lawful condition of
50 probation that may be imposed on a sentenced offender.

51 § 20. The district attorney may file a petition to seek the imposition
52 of a residency restriction for: (i) a sex offender classified as a level
53 2 or 3 offender who stands convicted of a felony which requires regis-
54 tration pursuant to article 6-C of the correction law and who is at
55 liberty on the effective date of this act; and (ii) a sex offender who
56 was convicted of a felony which requires registration pursuant to arti-

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

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