

STATE OF NEW YORK

8930

2025-2026 Regular Sessions

IN ASSEMBLY

July 16, 2025

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

AN ACT to amend the correction law, in relation to risk assessment instruments for sex offenders

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

1 Section 1. Subdivision 3 of section 168-d of the correction law, as
2 amended by chapter 11 of the laws of 2002, is amended to read as
3 follows:

4 3. For sex offenders released on probation or discharged upon payment
5 of a fine, conditional discharge or unconditional discharge, it shall be
6 the duty of the court applying the guidelines and risk assessment
7 instrument established in subdivision five of section one hundred
8 sixty-eight-1 of this article to determine the level of notification
9 pursuant to subdivision six of section one hundred sixty-eight-1 of this
10 article and whether such sex offender shall be designated a sexual pred-
11 ator, sexually violent offender, or predicate sex offender as defined in
12 subdivision seven of section one hundred sixty-eight-a of this article.
13 At least fifteen days prior to the determination proceeding, the
14 district attorney shall provide to the court and the sex offender a
15 written statement setting forth the determinations sought by the
16 district attorney together with the reasons for seeking such determi-
17 nations. The court shall allow the sex offender to appear and be heard.
18 The state shall appear by the district attorney, or [~~his or her~~] the
19 district attorney's designee, who shall bear the burden of proving the
20 facts supporting the determinations sought by clear and convincing
21 evidence. Where there is a dispute between the parties concerning the
22 determinations, the court shall adjourn the hearing as necessary to
23 permit the sex offender or the district attorney to obtain materials
24 relevant to the determinations from any state or local facility, hospi-
25 tal, institution, office, agency, department or division. Such materials

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

LBD06430-01-5

1 may be obtained by subpoena if not voluntarily provided to the request-
2 ing party. In making the determinations, the court shall review any
3 victim's statement and any relevant materials and evidence submitted by
4 the sex offender and the district attorney and the court may consider
5 reliable hearsay evidence submitted by either party provided that it is
6 relevant to the determinations. Facts previously proven at trial or
7 elicited at the time of entry of a plea of guilty shall be deemed estab-
8 lished by clear and convincing evidence and shall not be relitigated.
9 The court shall render an order setting forth its determinations and the
10 findings of fact and conclusions of law on which the determinations are
11 based. A copy of the order shall be submitted by the court to the divi-
12 sion. Upon application of either party, the court shall seal any portion
13 of the court file or record which contains material that is confidential
14 under any state or federal statute. Either party may appeal as of right
15 from the order pursuant to the provisions of articles fifty-five,
16 fifty-six and fifty-seven of the civil practice law and rules. Where
17 counsel has been assigned to represent the sex offender upon the ground
18 that the sex offender is financially unable to retain counsel, that
19 assignment shall be continued throughout the pendency of the appeal, and
20 the person may appeal as a poor person pursuant to article eighteen-B of
21 the county law.

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

24 2. The division shall advise the board that the sex offender has
25 established residence in this state. The board shall determine whether
26 the sex offender is required to register with the division. If it is
27 determined that the sex offender is required to register, the division
28 shall notify the sex offender of ~~[his or her]~~ the duty to register under
29 this article and shall require the sex offender to sign a form as may be
30 required by the division acknowledging that the duty to register and the
31 procedure for registration has been explained to the sex offender. The
32 division shall obtain on such form the address where the sex offender
33 expects to reside within the state and the sex offender shall retain one
34 copy of the form and send two copies to the division which shall provide
35 the information to the law enforcement agency having jurisdiction where
36 the sex offender expects to reside within this state. No later than
37 thirty days prior to the board making a recommendation, the sex offender
38 shall be notified that ~~[his or her]~~ the case is under review and that
39 ~~[he or she]~~ the sex offender is permitted to submit to the board any
40 information relevant to the review. After reviewing any information
41 obtained, and applying the guidelines and risk assessment instrument
42 established in subdivision five of section one hundred sixty-eight-l of
43 this article, the board shall within sixty calendar days make a recom-
44 mendation regarding the level of notification pursuant to subdivision
45 six of section one hundred sixty-eight-l of this article and whether
46 such sex offender shall be designated a sexual predator, sexually
47 violent offender, or predicate sex offender as defined in subdivision
48 seven of section one hundred sixty-eight-a of this article. This recom-
49 mendation shall be confidential and shall not be available for public
50 inspection. It shall be submitted by the board to the county court or
51 supreme court and to the district attorney in the county of residence of
52 the sex offender and to the sex offender. It shall be the duty of the
53 county court or supreme court in the county of residence of the sex
54 offender, applying the guidelines and risk assessment instrument estab-
55 lished in subdivision five of section one hundred sixty-eight-l of this
56 article, to determine the level of notification pursuant to subdivision

1 six of section one hundred sixty-eight-1 of this article and whether
2 such sex offender shall be designated a sexual predator, sexually
3 violent offender, or predicate sex offender as defined in subdivision
4 seven of section one hundred sixty-eight-a of this article. At least
5 thirty days prior to the determination proceeding, such court shall
6 notify the district attorney and the sex offender, in writing, of the
7 date of the determination proceeding and the court shall also provide
8 the district attorney and sex offender with a copy of the recommendation
9 received from the board and any statement of the reasons for the recom-
10 mendation received from the board. This notice shall include the follow-
11 ing statement or a substantially similar statement: "This proceeding is
12 being held to determine whether you will be classified as a level 3
13 offender (risk of repeat offense is high), a level 2 offender (risk of
14 repeat offense is moderate), or a level 1 offender (risk of repeat
15 offense is low), or whether you will be designated as a sexual predator,
16 a sexually violent offender or a predicate sex offender, which will
17 determine how long you must register as a sex offender and how much
18 information can be provided to the public concerning your registration.
19 If you fail to appear at this proceeding, without sufficient excuse, it
20 shall be held in your absence. Failure to appear may result in a longer
21 period of registration or a higher level of community notification
22 because you are not present to offer evidence or contest evidence
23 offered by the district attorney." The court shall also advise the sex
24 offender that ~~[he or she]~~ the sex offender has a right to a hearing
25 prior to the court's determination, that ~~[he or she]~~ the sex offender
26 has the right to be represented by counsel at the hearing and that coun-
27 sel will be appointed if ~~[he or she]~~ the sex offender is financially
28 unable to retain counsel. A returnable form shall be enclosed in the
29 court's notice to the sex offender on which the sex offender may apply
30 for assignment of counsel. If the sex offender applies for assignment
31 of counsel and the court finds that the offender is financially unable
32 to retain counsel, the court shall assign counsel to represent the sex
33 offender pursuant to article eighteen-B of the county law. If the
34 district attorney seeks a determination that differs from the recommen-
35 dation submitted by the board, at least ten days prior to the determi-
36 nation proceeding the district attorney shall provide to the court and
37 the sex offender a statement setting forth the determinations sought by
38 the district attorney together with the reasons for seeking such deter-
39 minations. The court shall allow the sex offender to appear and be
40 heard. The state shall appear by the district attorney, or ~~[his or her]~~
41 the district attorney's designee, who shall bear the burden of proving
42 the facts supporting the determinations sought by clear and convincing
43 evidence. It shall be the duty of the court applying the guidelines and
44 risk assessment instrument established in subdivision five of section
45 one hundred sixty-eight-1 of this article to determine the level of
46 notification pursuant to subdivision six of section one hundred sixty-
47 eight-1 of this article and whether such sex offender shall be desig-
48 nated a sexual predator, sexually violent offender, or predicate sex
49 offender as defined in subdivision seven of section one hundred sixty-
50 eight-a of this article. Where there is a dispute between the parties
51 concerning the determinations, the court shall adjourn the hearing as
52 necessary to permit the sex offender or the district attorney to obtain
53 materials relevant to the determinations from the state board of examin-
54 ers of sex offenders or any state or local facility, hospital, institu-
55 tion, office, agency, department or division. Such materials may be
56 obtained by subpoena if not voluntarily provided to the requesting

1 party. In making the determinations the court shall review any victim's
2 statement and any relevant materials and evidence submitted by the sex
3 offender and the district attorney and the recommendation and any mate-
4 rial submitted by the board, and may consider reliable hearsay evidence
5 submitted by either party, provided that it is relevant to the determi-
6 nations. If available, facts proven at trial or elicited at the time of
7 a plea of guilty shall be deemed established by clear and convincing
8 evidence and shall not be relitigated. The court shall render an order
9 setting forth its determinations and the findings of fact and conclu-
10 sions of law on which the determinations are based. A copy of the order
11 shall be submitted by the court to the division. Upon application of
12 either party, the court shall seal any portion of the court file or
13 record which contains material that is confidential under any state or
14 federal statute. Either party may appeal as of right from the order
15 pursuant to the provisions of articles fifty-five, fifty-six and fifty-
16 seven of the civil practice law and rules. Where counsel has been
17 assigned to represent the sex offender upon the ground that the sex
18 offender is financially unable to retain counsel, that assignment shall
19 be continued throughout the pendency of the appeal, and the person may
20 appeal as a poor person pursuant to article eighteen-B of the county
21 law.

22 § 3. Subdivision 5 and the opening paragraph of subdivision 6 of
23 section 168-1 of the correction law, subdivision 5 as added by chapter
24 192 of the laws of 1995, subparagraph (i) of paragraph (a) of subdivi-
25 sion 5 and the opening paragraph of subdivision 6 as amended by chapter
26 11 of the laws of 2002, are amended and a new subdivision 5-a is added
27 to read as follows:

28 5. The board shall develop guidelines and procedures and use a vali-
29 dated risk assessment instrument to assess the risk of a repeat offense
30 by such sex offender and the threat posed to the public safety. Such
31 risk assessment instrument shall be periodically subjected to empirical
32 re-validation. Such guidelines shall ~~[be based upon,]~~ incorporate
33 factors found to be predictive of risk of re-offense, including but not
34 limited to, the following:

35 (a) criminal history factors indicative of high risk of repeat
36 offense, including:

37 (i) whether the sex offender has a mental abnormality or personality
38 disorder that makes ~~[him or her]~~ the sex offender likely to engage in
39 predatory sexually violent offenses;

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

42 (iii) whether the sex offender served the maximum term;

43 (iv) whether the sex offender committed the felony sex offense against
44 a child;

45 (v) the age of the sex offender at the time of the commission of the
46 first sex offense;

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

49 (i) the relationship between such sex offender and the victim;

50 (ii) whether the offense involved the use of a weapon, violence or
51 infliction of serious bodily injury;

52 (iii) the number, date and nature of prior offenses;

53 (c) conditions of release that minimize risk ~~[or]~~ of re-offense,
54 including but not limited to whether the sex offender is under super-
55 vision; receiving counseling, therapy or treatment; or residing in a
56 home situation that provides guidance and supervision;

(d) physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness;
(e) whether psychological or psychiatric profiles indicate a risk of recidivism;
(f) the sex offender's response to treatment;
(g) recent behavior, including behavior while confined;
(h) recent threats or gestures against persons or expressions of intent to commit additional offenses; and
(i) review of any victim impact statement.

5-a. (a) The board in consultation with the department and the division of criminal justice services shall maintain a statewide database of sex offender recidivism statistics.

(b) The board in consultation with the department and the division of criminal justice services shall conduct a periodic retroactive study at least every five years to determine the predictive value of the risk assessment instrument used to assign risk of repeat offense levels to sex offenders pursuant to subdivision six of this section. After each such study the board shall prepare a detailed report to the governor and legislature determining the predictive value of the risk assessment instrument and the predictive value of each factor considered in the overall risk assessment when applied to the statewide database maintained pursuant to paragraph (a) of this subdivision. The report shall include recommended changes to the guidelines and risk assessment instrument to enhance their predictive capabilities for the purpose of periodic revalidation of such guidelines and risk assessment instrument pursuant to subdivision five of this section. The first such study shall be completed within two years of the effective date of this subdivision.

Applying these guidelines and the validated risk assessment instrument, the board shall within sixty calendar days prior to the discharge, parole, release to post-release supervision or release of a sex offender make a recommendation which shall be confidential and shall not be available for public inspection, to the sentencing court as to whether such sex offender warrants the designation of sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. In addition, the guidelines and such instrument 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 sex offender.

§ 4. Subdivisions 1 and 2 of section 168-n of the correction law, subdivision 1 as amended by chapter 11 of the laws of 2002 and subdivision 2 as amended by chapter 453 of the laws of 1999, are amended to read as follows:

1. A determination that an offender is a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article shall be made prior to the discharge, parole, release to post-release supervision or release of such offender by the sentencing court applying the guidelines and risk assessment instrument established in subdivision five of section one hundred sixty-eight-l of this article after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article.

2. In addition, applying the guidelines and risk assessment instrument established in subdivision five of section one hundred sixty-eight-l of this article, the sentencing court shall also make a determination with

1 respect to the level of notification, after receiving a recommendation
2 from the board pursuant to section one hundred sixty-eight-1 of this
3 article. Both determinations of the sentencing court shall be made thir-
4 ty calendar days prior to discharge, parole or release.
5 § 5. This act shall take effect on the one hundred eightieth day after
6 it shall have become a law.