

FAILURE TO REGISTER OR VERIFY AS A SEX OFFENDER¹
Correction Law § 168-t
(Committed on or after Jan. 21, 1996)

The (*specify*) count is Failure to Register or Verify as a Sex Offender.

Under our law, any sex offender required to register [or to verify information about himself or herself] pursuant to the provisions of law who fails to register [or verify information about himself or herself] in the manner and within the time periods provided for by law is guilty of a crime.²

To be guilty of this crime, a sex offender must know that he or she is required to register and must know the manner and time

¹ In 2005, this crime was renamed "Penalty." L. 2005, ch. 604.

²

The statute reads: "Any sex offender 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." The distinction between the class of felony based upon criminal history was replaced with the generic "guilty of a crime." An additional element of this crime when charged as a D felony is that the defendant has previously been convicted of this crime. That element must be charged in a special information, and after commencement of trial the defendant must be arraigned on that special information. If, upon such arraignment, the defendant admits the element, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. But if the defendant denies the element or remains mute, then the Court must first, in the definition of the crime, reinsert in place of "a crime" the statutory language: "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," and second, the Court must add that to the elements of the crime as set forth in footnote 4. CPL § 200.60. See *People v. Cooper*, 78 N.Y.2d 476 (1991).

periods within which he or she is required to do so.³

A sex offender is a person convicted of (specify).

Under our law, a sex offender is required to register [or to verify information about himself or herself] in the following manner and within the following time periods:

[NOTE: Select the appropriate provision from the Correction Law which sets forth various registration and verification requirements throughout Correction Law article 6-C. For example:

A sex offender 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 sex offender released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, register with the division of criminal justice services on a form prepared by the division.^{4]}

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), was a sex offender required to register [or to verify information about himself/herself];

2. That the defendant knew that he/she was required to register and knew the manner and time periods within which

³ This paragraph has been added to comport with due process. See *Lambert v. California*, 355 U.S. 225 (1957). See also Penal Law § 15.15(2); cf. *People v. Patterson*, 185 Misc. 2d 519 (N.Y. City Crim. Ct. 2000).

⁴ Correction Law §168-f(1).

he/she was required to do so; and

3. That the defendant failed to register [or verify] in the manner and within the time periods provided for by law.⁵

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

⁵ If the defendant is being prosecuted for the D felony and has admitted a previous conviction, the crime will consist of only the three elements listed above. If the defendant has denied the previous conviction or has remained mute, add as the fourth element:

“and 4. That the defendant has previously been convicted of failure to register or verify as a sex offender.”