

Article 6 C of the Correction Law: The Sex Offender Registration Act.

Consequences of Conviction

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This is a summary of the statute focused on the consequences of SORA upon the offender. There are provisions, definitions, and obligations of relevant agencies and the courts not included in this discussion because they are not relevant to the issue of consequences. SORA applies to offenders whose crimes took place before the effective date of the statute, January 4, 1996. See e.g., People v. Brown, 302 A.D.2d 919, 921 (4th Dept. 2003); People v. Lee, 292 A.D.2d 639, 640 (3d Dept. 2002); People v. Hernandez, 264 A.D.2d 783 (2d Dept.), lv. denied, 94 N.Y.2d 863 (1999).

Section 168-a(2) has been amended to add crimes convictions of which trigger the applicability of SORA and the 2002 amendment specifically applies to crimes committed before the amendment where the offender is still in custody. Session Laws 2002 ch.11 §24.

The statute has an impact beginning at the time of sentence based on a conviction for a crime set out in 168-a(2) and (3). Under 168-d, upon conviction of an offender for a crime listed in the statute, 168-a (2) and (3), the judge shall certify that the offender is a sex offender and notify the offender of the registration obligations under the statute. Where the sex offense as defined in 168-a(2) includes a special factor, such as the age of the complainant, and the offender challenges the factor, or the offender

challenges an allegation that he has previously been convicted of a sexual offense or a sexually violent offense, prior to certification the judge must hold a hearing without a jury to determine whether the factor is proven by clear and convincing evidence. 168-d(1)(b) and (c). If after the hearing, the judge makes the certification, the judge must give the offender notice of the duty to register under the statute.

When the offender is convicted for a crime listed in 168-a(2) and (3), but is given a non-incarceratory sentence or is released from custody on payment of a fine or other reason, the offender is not only advised of the duty to register, he/she must do so at the time of sentence. 168-f(1)(b). The offender must read and sign in court a form prepared by DCJS. The form includes the offender's name and address, and the name of any institution of higher education, see 168-a(13) and Ed. Law §2(8), with which the offender will have any association in any capacity and any residence provided by the educational institution to be used by the offender.

For offenders receiving non-incarceratory sentences, the court shall hold a hearing to determine the level of risk of re-offense. The levels are 1 (lowest risk), 2 (moderate risk), or 3 (highest risk). The level of risk of re-offense determines the reporting requirements by the offender, 168-d(3), and the access by others to the information. The factors to be considered by the court are set out by the Board of Examiners of Sex Offenders ("Board") in accordance with 168-l(5). Section 168-d (3)

sets out the procedures for the hearing, determination, and appeal of the risk level. The court must also determine whether the offender is to be designated a sexual predator, 168-a(7)(a), a sexually violent offender, 168-a(7)(b), or a predicate sexual offender, 168-a(7)(c). (These classifications are not generally relevant to an offender who receives probation, or other non-incarceratory sentence.)

If an offender is incarcerated pursuant to a conviction, within 60 days prior to release of an offender, the Board prepares a risk assessment document based on factors or criteria set out in the statute, 168-l(5), and proposes to the sentencing court a recommended risk level and a designation. 168-l(6). To make its recommendations, the Board may consider information supplied by other government agencies and medical facilities. 168-m. This information is subject to a request for sealing under privacy laws when the request is made by the offender. 168-m.

The recommendation is submitted to the sentencing judge to determine the factual basis for the level of risk. The assessment document must also include information to enable the judge to make a designation of whether the offender is a sexual predator, a sexually violent offender, or a predicate sex offender.

At least 15 days prior to the release of the offender, the offender must be notified of the duty to register and must in fact register. 168-(1)(a). The offender must read and sign the form provided by DCJS. The form must state the offender's address and the

name and address of any institution of higher education to which he/she is or will be connected in any capacity and whether the offender will be living in a facility provided by the institution. 168-e. The offender is entitled to challenge the factual claims in the proposed assessment, is entitled to have a lawyer for the proceeding, and is entitled to an appeal. The procedures are set out in the statute. 168-n. See also the terms of the settlement for redetermination proceedings in Doe v. Pataki, 96 Civ. 1657 (DC)(SDNY).

The offender who is determined to be a level one or level two risk is required to register annually for ten years from the initial date of registration. 168-h(1). The Division of Criminal Justice (DCJS) website states that the annual verification must be made even while the offender is in custody. This annual verification form must be mailed to DCJS within ten days of the receipt of the form by the offender, 168-f(2)(a), and state whether the offender still lives at the previously reported address. 168-f(2)(b).

An offender who is a level 3 risk, or is designated a sexual predator, a sexually violent offender, or a predicate sex offender is required to register for life. 168-h(2). A level 3 risk offender or a sex predator is also required to verify personally his/her address every 90 calendar days with the appropriate law enforcement agency. 168-h(3), 168-f(3). A level 3 risk offender must verify whether his/her employment is the

same as last reported to the DCJS. 168-f(2)(b-1). A level 3 offender must report any change of address or association with a higher education institution within 10 days of the change and a \$10 fee is charged to the offender when these changes are reported. 168-b(4), 168-f (4).

The DCJS website also states that the offender must report his/her driver's license number and the state in which the license is issued, and for any vehicle that is owned or operated by the offender, the offender must report the name of the owner, the year, model, make and color of the vehicle.

DCJS is required to keep a directory or registry of every person required to register. The file includes personal identification information including description; aliases; addresses; internet accounts and screen names; a photograph; fingerprints; the name and address of any institution of higher learning with which the offender shall be associated in any capacity and whether the offender resides in residences provided by the institution; the facts of the crime; mode of operations; vehicle identification information; and other pertinent information. 168-b(1)(a-d, f). If the offender has been designated a level 3, the place of employment and its address must be included. 168-b(1)(e).

Also, level 3 offenders must be included in a sub-directory. 168-b(6); 168-q. This directory includes the offender's address, employment address, a photograph,

description, age, markings, crime, mode of operation, targeted victim, name and address of any institution with which the offender is associated, and any special conditions of release.

There are various provisions for access to the information . The information can be shared with other registries. 168-b(2). The information is accessible to the public. The DCJS website states that a member of the public can call 1(800) 262- 3257 to ascertain if a person is registered and the risk level. See 168-b(5). The caller must have the name of the offender and the offender's date of birth, driver's license number or social security number. The caller must be over 18 and supply his/her name, address and telephone number. Section 168-p sets out these requirements of access to the information and others. The caller must not use the information to harass, threaten or act illegally toward the offender.

Law enforcement agencies receiving information about level 2 and level 3 offenders may disseminate relevant information about the offender to any entity with vulnerable populations related to the nature of the offense. The entity receiving the information may disseminate the information at its discretion. 168-l(6)(b)and (c).

The subdirectory of level 3 offenders is given to all appropriate law enforcement agencies. The directory is available to the public on the DCJS website, 168-q, and must be made available to the public on request. 168-l(6)(c).

An offender's failure to comply with the requirements of registration and verification are violations of probation and parole with a possible immediate revocation. 168-d(2); 168-t. The first failure is a misdemeanor; the second failure is a D felony. 168-t.