

**REGISTRATION OF SEX OFFENDERS ACT
("ROSA")**

Approved July 25, 2015

Effective Jan. 21, 2016

AN ACT to amend the correction law, the penal law, and the executive law in relation to the protection of people services from convicted sex offenders, to be henceforth known as the "Registration of Sex Offenders Act" or "ROSA."

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

§ 1. Legislative purpose or findings:

A. WHEREAS, the legislature finds that the danger of recidivism posed by sex offenders, especially those sexually violent offenders who commit predatory acts characterized by repetitive and compulsive behavior, and that the protection of the public from these offenders is of paramount concern or interest to government. The legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations and quickly apprehend sex offenders are impaired by the lack of information about sex offenders who live within their jurisdiction and that the lack of information shared with the public may result in the failure of the criminal justice system to identify, investigate, apprehend and prosecute sex offenders.

The system of registering sex offenders is a proper exercise of the state's police power regulating present and ongoing conduct. Registration will provide law enforcement with additional information critical to preventing sexual victimization and to resolving incidents involving sexual abuse and exploitation promptly. It will allow them to alert the public when necessary for the continued protection of the community.

Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in safety and in the effective operation of government. In balancing offenders due process and other rights, and the interests of public security, the legislature finds that releasing information about sex offenders to law enforcement agencies and, under certain circumstances, providing access to limited information about certain sex offenders to the general public, will further the primary government interest of protecting vulnerable populations and in some instances the public, from potential harm.

Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register and to authorize the release of necessary and relevant information about certain sex offenders to the public as provided in this act.

B. AND WHEREAS, the danger of recidivism posed by sex offenders who commit predatory acts against children, and the protection of the public from these offenders, are of paramount concern and interest to the legislature. As a result, the legislature has enacted a series of laws to monitor sex offenders and protect the public from victimization, specifically, a system to: register sex offenders; provide law enforcement agencies, entities with vulnerable populations, and the general public access to information contained in the state's sex offender registry; prohibit high risk sex offenders from entering upon school grounds; and civilly confine dangerous sex offenders who would likely re-offend if released. Such laws have enhanced the state's ability to protect the public and prevent further victimization, sexual abuse and exploitation.

However, existing law has failed to keep pace with rapid advances in computer technology, particularly the internet. People meet, socialize and exchange ideas through online services such as social networking websites. Such websites are accessible to minors who may easily be presented with obscene or indecent material and be subjected to unlawful sexual advances from adults. Therefore, in the hands of a sexual predator intent on harming minors, social networking websites and other similar services pose a clear and present danger to Lackawanners. Behind a computer screen, convicted sex offenders are able to hide their identity while attempting to engage children in illicit activity. Additionally, given the secrecy, manipulation and deception that often accompanies sex offending behavior, the internet—with its promise of anonymity—can provide an opportunity for convicted sex offenders on probation or parole to circumvent supervision, thereby undermining their treatment and increasing the risk of recidivism.

Recent investigations conducted by the attorney general have found that tens of thousands of known sex offenders use social networking websites popular with children. Existing law, however, does not require sex offenders to provide the division of criminal justice services certain key internet identifiers, notwithstanding that such offenders must disclose personal information such as their home address, expected place of domicile and driver's license number. Moreover, while existing law mandates that dangerous sex offenders on probation or parole be prohibited from entering places where children congregate, such as school grounds, there are no such mandatory prohibitions to prevent offenders from victimizing children in cyberspace.

As a result of his investigations, the attorney general has worked with various social networking websites and other types of internet service providers to strengthen security of online services and better police them of known predators. For example, in 2007, the attorney general entered into a landmark settlement agreement with a large social networking website that created a new model to enforce safeguards aimed at protecting children and adolescents from sexual predators, obscene content and harassment.

While such settlements have greatly enhanced protections for children, existing law limits the ability of law enforcement to prevent a sex offender from using the internet to contact a child in the first place. For example, social networking websites are not currently able to access internet information

contained in the state's sex offender registry and are therefore unable to preclude sex offenders from accessing such website's most vulnerable users.

The legislature is mindful that more than 200,000,000 American adults use the internet for employment purposes, to access educational opportunities, communicate with family and friends, manage finances and pay bills, stay informed of news and current events, and shop. Further, persons on parole and probation currently face many barriers to employment and educational opportunities as a result of having a criminal record. Studies indicate that access to employment and education greatly reduces the risk of recidivism by ex-offenders. Therefore, any measure that restricts an offender's use of the internet must be tailored to specifically target the types of offenses committed on the internet while not making it impossible for such offenders to successfully reintegrate back into society.

This groundbreaking legislation enables Lackawanna to combat misuse of the internet by convicted sex offenders by requiring sex offenders to register their internet identifiers with law enforcement, permitting social networking websites to access the internet identifiers of convicted sexual predators in order to prescreen or remove them from services used by children and notify law enforcement of potential violations of law, and prohibiting certain high risk sex offenders from using the internet to victimize children.

In balancing offenders' rights, and the interests of public security, the legislature finds that releasing information about sex offenders to appropriate and responsible parties will further the primary government interest of protecting vulnerable populations and the public from potential harm.

Likewise, the law mandates that the court and the parole board prohibit certain dangerous convicted sex offenders from using the internet to access inappropriate material, access a commercial social networking website, communicate with others for the purpose of promoting sexual relations with minors, or, in certain circumstances, communicate with minors and further authorizes sentencing courts to impose as a condition of probation reasonable limitations on a sex offender's internet use as it determines to be necessary or appropriate.

§ 2. The correction law is amended by adding a new article to read as follows:

§ 168. Short title and Purpose

This article shall be known and may be cited as the "Registration of Sex Offenders Act" or "ROSA." The purpose of this Act is to protect the public from the dangers posed by sexual offenders and those convicted of sexual offenses and sexually violent offenses, as defined in § 168-a(1), (2) and (3) of this Act.

§168-a. Definitions

As used in this article, the following definitions apply:

1. "Sex offender" includes any person who is convicted of any of the offenses set forth in subdivision two or three of this section.

Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this article.

2. "Sex offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law or as a sexually motivated felony defined in section 130.91 of such law; or (b) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, provided the victim of such offense is less than eighteen years of age; or (c) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law regardless of the age of the victim and the offender has previously been convicted of: (i) a sex offense defined in this article, (ii) a sexually violent offense defined in

this article, or (iii) any of the provisions of section 130.52 or 130.55 of the penal law, or an attempt thereof; or (d) a conviction of (i) an offense in any other jurisdiction which includes all of the essential elements of any such crime provided for in paragraph (a), (b) or (c) of this subdivision or (ii) a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred or, (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. (e) a conviction of or a conviction for an attempt to commit any of the provisions of subdivision two, three or four of section 250.45 of the penal law, unless upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate.

3. "Sexually violent offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.35, 130.50, 130.65, 130.66, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.53, 130.65-a and 130.90 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law; or (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 other jurisdiction for which the offender is required to register as a

sex offender in the jurisdiction in which the conviction occurred.

4. "Law enforcement agency having jurisdiction" means: (a) (i) the chief law enforcement officer in the village, town or city in which the offender expects to reside upon his or her discharge, probation, parole, release to post-release supervision or upon any form of state or local conditional release; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which the offender expects to reside; or (iii) if there be no chief enforcement officer in such village, town, city or county, the division of state police and (b) in the case of a sex offender who is or expects to be employed by, enrolled in, attending or employed, whether for compensation or not, at an institution of higher education, (i) the chief law enforcement officer in the village, town or city in which such institution is located; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which such institution is located; or (iii) if there be no chief law enforcement officer in such village, town, city or county, the division of state police; and (iv) if such institution operates or employs a campus law enforcement or security agency, the chief of such agency and (c) in the case of a sex offender who expects to reside within a state park or on other land under the jurisdiction of the office of parks, recreation and historic preservation, the state regional park police.

5. "Division" means the division of criminal justice services as defined by section eight hundred thirty-seven of the executive law.

6. "Hospital" means: (a) a hospital as defined in subdivision two of section four hundred of this chapter and applies to persons committed to such hospital by order of commitment made pursuant to article sixteen of this chapter; or (b) a secure treatment facility as defined in section 10.03 of the mental hygiene law and applies to persons committed to such facility by an order

made pursuant to article ten of the mental hygiene law.

7. (a) "Sexual predator" means a sex offender who has been convicted of a sexually violent offense defined in subdivision three of this section and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses. (b) "Sexually violent offender" means a sex offender who has been convicted of a sexually violent offense defined in subdivision three of this section. (c) "Predicate sex offender" means a sex offender who has been convicted of an offense set forth in subdivision two or three of this section when the offender has been previously convicted of an offense set forth in subdivision two or three of this section.

8. "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

9. "Predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

10. "Board" means the "board of examiners of sex offenders" established pursuant to section one hundred sixty-eight-1 of this article.

11. "Local correctional facility" means a local correctional facility as that term is defined in subdivision sixteen of section two of this chapter.

12. Probation means a sentence of probation imposed pursuant to article sixty-five of the penal law and shall include a sentence of imprisonment imposed in conjunction with a sentence of probation.

13. "Institution of higher education" means an institution in the state providing higher education as such term is defined in subdivision eight of section two of the education law.

14. "Nonresident worker" means any person required to register as a sex offender in another

jurisdiction who is employed or carries on a vocation in this state, on either a full-time or a part-time basis, with or without compensation, for more than fourteen consecutive days, or for an aggregate period exceeding thirty days in a calendar year.

15. "Nonresident student" means a person required to register as a sex offender in another jurisdiction who is enrolled on a full-time or part-time basis in any public or private educational institution in this state including any secondary school, trade or professional institution or institution of higher education.

16. "Authorized internet entity" means any business, organization or other entity providing or offering a service over the internet which permits persons under eighteen years of age to access, meet, congregate or communicate with other users for the purpose of social networking.

17. "Internet access provider" means any business, organization or other entity engaged in the business of providing a computer and communications facility through which a customer may obtain access to the internet, but does not include a business, organization or other entity to the extent that it provides only telecommunications services.

18. "Internet identifiers" means electronic mail addresses and designations used for the purposes of chat, instant messaging, social networking or other similar internet communication.

§168-b. Duties of the division; registration information

1. The division shall establish and maintain a file of individuals required to register pursuant to the provisions of this article which shall include the following information of each registrant:

(a) The sex offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, driver's license number, home address and/or expected place of domicile, any internet accounts with internet access providers belonging to such offender and internet

identifiers that such offender uses.

(b) A photograph and set of fingerprints. For a sex offender given a level three designation, the division shall, during the period of registration, update such photograph once each year. For a sex offender given a level one or level two designation, the division shall, during the period of registration, update such photograph once every three years. The division shall notify the sex offender by mail of the duty to appear and be photographed at the specified law enforcement agency having jurisdiction. Such notification shall be mailed at least thirty days and not more than sixty days before the photograph is required to be taken pursuant to subdivision two of section one hundred sixty-eight-f of this article.

(c) A description of the offense for which the sex offender was convicted, the date of conviction and the sentence imposed including the type of assigned supervision and the length of time of such supervision.

(d) The name and address of any institution of higher education at which the sex offender is or expects to be enrolled, attending or employed, whether for compensation or not, and whether such offender resides in or will reside in a facility owned or operated by such institution.

(e) If the sex offender has been given a level two or three designation, such offender's employment address and/or expected place of employment.

(f) Any other information deemed pertinent by the division.

2. a. The division is authorized to make the registry available to any regional or national registry of sex offenders for the purpose of sharing information. The division shall accept files from any regional or national registry of sex offenders and shall make such files available when requested pursuant to the provisions of this article.

b. The division shall also make registry information available to: (i) the department of health, to enable such department to identify persons ineligible to receive reimbursement or

coverage for drugs, procedures or supplies pursuant to subdivision seven of section twenty-five hundred ten of the public health law, paragraph (e) of subdivision four of section three hundred sixty-five-a of the social services law, paragraph (e-1) of subdivision one of section three hundred sixty-nine-ee of the social services law, and subdivision one of section two hundred forty-one of the elder law; (ii) the department of insurance to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subsection (b-1) of section four thousand three hundred twenty-two and subsection (d-1) of section four thousand three hundred twenty-six of the insurance law; and (iii) a court, to enable the court to promptly comply with the provisions of paragraph (a-1) of subdivision one of section two hundred forty of the domestic relations law and subdivision (e) of section six hundred fifty-one of the family court act.

c. The department of health and the department of insurance may disclose to plans providing coverage for drugs, procedures or supplies for the treatment of erectile dysfunction pursuant to section three hundred sixty-nine-ee of the social services law or sections four thousand three hundred twenty-one, four thousand three hundred twenty-two or four thousand three hundred twenty-six of the insurance law registry information that is limited to the names, dates of birth, and social security numbers of persons who are ineligible by law to receive payment or reimbursement for specified drugs, procedures and supplies pursuant to such provisions of law. Every such plan shall identify to the department of health or the department of insurance, in advance of disclosure, each person in its employ who is authorized to receive such information provided, however, that such information may be disclosed by such authorized employee or employees to other personnel who are directly involved in approving or disapproving reimbursement or coverage for such drugs, procedures and supplies for such plan members,

and provided further that no person receiving registry information shall redisclose such information except to other personnel who are directly involved in approving or disapproving reimbursement or coverage for such drugs, procedures and supplies.

d. No official, agency, authorized person or entity, whether public or private, shall be subject to any civil or criminal liability for damages for any decision or action made in the ordinary course of business of that official, agency, authorized person or entity pursuant to paragraphs b and c of this subdivision, provided that such official, agency, authorized person or entity acted reasonably and in good faith with respect to such registry information.

e. The division shall require that no information included in the registry shall be made available except in the furtherance of the provisions of this article.

3. The division shall develop a standardized registration form to be made available to the appropriate authorities and promulgate rules and regulations to implement the provisions of this section. Such form shall be written in clear and concise language and shall advise the sex offender of his or her duties and obligations under this article.

4. The division shall mail a nonforwardable verification form to the last reported address of the person for annual verification requirements.

5. The division shall also establish and operate a telephone number as provided for in section one hundred sixty-eight-p of this article.

6. The division shall also establish a subdirectory pursuant to section one hundred sixty-eight-q of this article.

7. The division shall also establish a public awareness campaign to advise the public of the provisions of this article.

8. The division shall charge a fee of ten dollars each time a sex offender registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education as required by subdivision four of section one

hundred sixty-eight-f of this article. The fee shall be paid to the division by the sex offender. The state comptroller is hereby authorized to deposit such fees into the general fund. 9. The division shall, upon the request of any children's camp operator, release to such person any information in the registry relating to a prospective employee of any such person or entity in accordance with the provisions of this article. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry to such persons.

10. The division shall, upon the request of any authorized internet entity, release to such entity internet identifiers that would enable such entity to prescreen or remove sex offenders from its services or, in conformity with state and federal law, advise law enforcement and/or other governmental entities of potential violations of law and/or threats to public safety. Before releasing any information the division shall require an authorized internet entity that requests information from the registry to submit to the division the name, address and telephone number of such entity and the specific legal nature and corporate status of such entity.

Except for the purposes specified in this subdivision, an authorized internet entity shall not publish or in any way disclose or redisclose any information provided to it by the division pursuant to this subdivision. The division may charge an authorized internet entity a fee for access to registered internet identifiers requested by such entity pursuant to this subdivision. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry, including but not limited to, the disclosure and redisclosure of such information, and the imposition of any fees.

11. The division shall promptly notify each sex offender whose term of registration and verification would otherwise have expired prior to March thirty-first, two thousand seven of the continuing duty to register and verify under this article.

12. The division shall make registry information regarding level two and three sex offenders available to municipal housing authorities, as established pursuant to article three of the public housing law, to enable such authorities to identify persons ineligible to reside in public housing. The division shall, at least monthly, release to each municipal housing authority information about level two and three sex offenders with a home address and/or expected place of domicile within the corresponding municipality. The division may promulgate rules and regulations relating to procedures for the release of information in the registry to such authorities.

§168-c. Sex offender; relocation; notification

1. In the case of any sex offender, it shall be the duty of the department, hospital or local correctional facility at least ten calendar days prior to the release or discharge of any sex offender from a correctional facility, hospital or local correctional facility to notify the division of the contemplated release or discharge of such sex offender, informing the division in writing on a form provided by the division indicating the address at which he or she proposes to reside and the name and address of any institution of higher education at which he or she expects to be enrolled, attending or employed, whether for compensation or not, and whether he or she resides in or will reside in a facility owned or operated by such institution. If such sex offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on parole, such notification of the change of status shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division.

2. In the case of any sex offender on probation, it shall be the duty of the sex offender's probation officer to notify the division within forty-eight hours of the new place of residence on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on probation, such notification of the change of status shall be sent by the sex offender's probation officer within forty-eight hours to the division on a form provided by the division.

3. In the case in which any sex offender escapes from a state or local correctional facility or hospital, the designated official of the facility or hospital where the person was confined shall notify within twenty-four hours the law enforcement agency having had jurisdiction at the time of his or her conviction, informing such law enforcement agency of the name and aliases of the person, and the address at which he or she resided at the time of his or her conviction, the amount of time remaining to be served, if any, on the full term for which he or she was sentenced, and the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such sex offender's fingerprints and photograph and a summary of his or her criminal record.

4. The division shall provide general information, in registration materials and annual correspondence, to registrants concerning notification and registration procedures that may apply if the registrant is authorized to relocate and relocates to another state or United States possession, or commences employment or attendance at an education institution in another state or United States possession. Such information shall include addresses and telephone numbers for relevant agencies from which additional information may be obtained.

§168-d. Duties of the court

1. (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 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.

(b) Where a defendant stands convicted of an offense defined in paragraph (b) of subdivision two of section one hundred sixty-eight-a of this article or where the defendant was convicted of patronizing a prostitute in the third degree under section 230.04 of the penal law and the defendant controverts an allegation that the victim of such offense was less than eighteen years of age or, in the case of a conviction under section 230.04 of the penal law, less than seventeen years of age, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the victim was less than eighteen years of age or less than seventeen years of age, as applicable, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of the age of the victim. Facts concerning the age of the victim proven at trial or ascertained at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the victim of the offense was less than eighteen years of age or less than seventeen years of age, as applicable, the court must make a finding and enter an order setting forth the age of the victim. If the court finds that the victim of such offense was under eighteen years of age or under

seventeen years of age, as applicable, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

(c) Where a defendant stands convicted of an offense defined in paragraph (c) of subdivision two of section one hundred sixty-eight-a of this article and the defendant controverts an allegation that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of whether the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, the court must make a finding and enter an order determining whether the defendant was previously convicted of a sex offense or a sexually violent offense defined in

this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law. If the court finds that the defendant has such a previous conviction, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

2. Any sex offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such sex offender shall register with the division on a form prepared by the division. The court shall require the sex offender to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the sex offender expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The court shall give one copy of the form to the sex offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the sex offender of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of

repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the court shall determine whether the offender is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. Where the court orders a sex offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such sex offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

3. For sex offenders released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. At least fifteen days prior to the determination proceeding, the district attorney shall provide to the court and the sex offender a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations, the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court 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. Either party 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, that 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.

4. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision three of this section.

§168-e. Discharge of sex offender from correctional facility; duties of official in charge

1. Any sex offender, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the sex offender to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the sex offender expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The facility shall give one copy of the form to the sex offender, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the sex

offender a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the sex offender and sent to the division by the facility at least ten days prior to the sex offender's release or discharge.

2. The division shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation if not already obtained.

§168-f. Duty to register and to verify

1. Any 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 on a form prepared by the division.

2. For a sex offender required to register under this article on each anniversary of the sex offender's initial registration date during the period in which he is required to register under this section the following applies:

(a) The sex offender shall mail the verification form to the division within ten calendar days after receipt of the form.

(b) The verification form shall be signed by the sex offender, and state that he still resides at the address last reported to the division.

(b-1) If the sex offender has been given a level two or three designation, such offender shall sign the verification form, and state that he or she still is employed at the address last reported to the division.

(b-2) If the sex offender has been given a level three designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the first anniversary of the sex offender's initial registration and every year thereafter during the period of registration for the purpose of

providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(b-3) If the sex offender has been given a level one or level two designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the third anniversary of the sex offender's initial registration and every three years thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(c) If the sex offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section unless he proves that he or she has not changed his or her residence address.

(c-1) If the sex offender, to whom a notice has been mailed at the last reported address pursuant to paragraph b of subdivision one of section one hundred sixty-eight-b of this article, fails to personally appear at the law enforcement agency having jurisdiction, as provided in paragraph (b-2) or (b-3) of this subdivision, within twenty days of the anniversary of the sex offender's initial registration, or an alternate later date scheduled by the law enforcement agency having jurisdiction, he or she shall be in violation of this section. The duty to personally

appear for such updated photograph shall be temporarily suspended during any period in which the sex offender is confined in any hospital or institution, and such sex offender shall personally appear for such updated photograph no later than ninety days after release from such hospital or institution, or an alternate later date scheduled by the law enforcement agency having jurisdiction.

3. The provisions of subdivision two of this section shall be applied to a sex offender required to register under this article except that such sex offender designated as a sexual predator or having been given a level three designation must personally verify his or her address with the local law enforcement agency every ninety calendar days after the date of release or commencement of parole or post-release supervision, or probation, or release on payment of a fine, conditional discharge or unconditional discharge. At such time the law enforcement agency having jurisdiction may take a new photograph of such sex offender if it appears that the offender has had a change in appearance since the most recent photograph taken pursuant to paragraph (b-2) of subdivision two of this section. If such photograph is taken, the law enforcement agency shall promptly forward a copy of such photograph to the division. The duty to personally verify shall be temporarily suspended during any period in which the sex offender is confined to any state or local correctional facility, hospital or institution and shall immediately recommence on the date of the sex offender's release.

4. Any sex offender shall register with the division no later than ten calendar days after any change of address, internet accounts with internet access providers belonging to such offender, internet identifiers that such offender uses, or his or her status of enrollment, attendance, employment or residence at any institution of higher education. A fee of ten dollars, as authorized by subdivision eight of section one hundred sixty-eight-b of this article, shall be submitted by the sex offender each time

such offender registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education. Any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status.

5. The duty to register under the provisions of this article shall not be applicable to any sex offender whose conviction was reversed upon appeal or who was pardoned by the governor.

6. Any nonresident worker or nonresident student, as defined in subdivisions fourteen and fifteen of section one hundred sixty-eight-a of this article, shall register his or her current address and the address of his or her place of employment or educational institution attended with the division within ten calendar days after such nonresident worker or nonresident student commences employment or attendance at an educational institution in the state. Any nonresident worker or nonresident student shall notify the division of any change of residence, employment or educational institution address no later than ten days after such change. The division shall notify the law enforcement agency where the nonresident worker is employed or the educational institution is located that a nonresident worker or nonresident student is present in that agency's jurisdiction.

§168-g. Prior convictions; duty to inform and register

1. The department or office of probation and correctional alternatives in accordance with risk factors pursuant to section one hundred sixty-eight-l of this article shall determine the duration of registration and notification for every sex offender who on the effective date of this article is then on community supervision or probation for an offense provided for in subdivision two or three of section one hundred sixty-eight-a of this article.

2. Every sex offender who on the effective date of this article is then on community supervision or probation for an offense provided for in

subdivision two or three of section one hundred sixty-eight-a of this article shall within ten calendar days of such determination register with his parole or probation officer. On each anniversary of the sex offender's initial registration date thereafter, the provisions of section one hundred sixty-eight-f of this article shall apply. Any sex offender who fails or refuses to so comply shall be subject to the same penalties as otherwise provided for in this article which would be imposed upon a sex offender who fails or refuses to so comply with the provisions of this article on or after such effective date.

3. It shall be the duty of the parole or probation officer to inform and register such sex offender according to the requirements imposed by this article. A parole or probation officer shall give one copy of the form to the sex offender and shall, within three calendar days, send two copies electronically or otherwise to the department which shall forward one copy electronically or otherwise to the law enforcement agency having jurisdiction where the sex offender resides upon his or her community supervision, probation, or local conditional release.

4. A petition for relief from this section is permitted to any sex offender required to register while released to community supervision or probation pursuant to section one hundred sixty-eight-o of this article.

§168-h. Duration of registration and verification

1. The duration of registration and verification for a sex offender who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification, shall be annually for a period of twenty years from the initial date of registration.

2. The duration of registration and verification for a sex offender who, on or after March eleventh, two thousand two, is designated a

sexual predator, or a sexually violent offender, or a predicate sex offender, or who is classified as a level two or level three risk, shall be annually for life. Notwithstanding the foregoing, a sex offender who is classified as a level two risk and who is not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register and verify as provided by subdivision one of section one hundred sixty-eight-o of this article.

3. Any sex offender having been designated a level three risk or a sexual predator shall also personally verify his or her address every ninety calendar days with the local law enforcement agency having jurisdiction where the offender resides.

§168-i. Registration and verification requirements

Registration and verification as required by this article shall consist of a statement in writing signed by the sex offender giving the information that is required by the division and the division shall enter the information into an appropriate electronic data base or file.

§168-j. Notification of local law enforcement agencies of change of address

1. Upon receipt of a change of address by a sex offender required to register under this article, the division shall notify the local law enforcement agency having jurisdiction of the new place of residence and the local law enforcement agency where the sex offender last resided of the new place of residence.

2. Upon receipt of change of address information, the local law enforcement agency having jurisdiction of the new place of residence shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-eight-1 of this article.

3. The division shall, if the sex offender changes residence to another state, notify the appropriate agency within that state of the new place of residence.

4. Upon receipt of a change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a sex offender required to register under this article, the division shall notify each law enforcement agency having jurisdiction which is affected by such change.

5. Upon receipt of change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a sex offender required to register under this article, each law enforcement agency having jurisdiction shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-eight-1 of this article.

§168-k. Registration for change of address from another state

1. A sex offender who has been convicted of an offense which requires registration under paragraph (d) of subdivision two or paragraph (b) of subdivision three of section one hundred sixty-eight-a of this article shall notify the division of the new address no later than ten calendar days after such sex offender establishes residence in this state.

2. The division shall advise the board that the sex offender has established residence in this state. The board shall determine whether the sex offender is required to register with the division. If it is determined that the sex offender is required to register, the division shall notify the sex offender of his or her duty to register under this article and shall require the sex offender to sign a form as may be required by the division acknowledging that the duty to register and the procedure for registration has been explained to the sex offender. The division shall obtain on such form the address where the sex offender expects to reside within the state and the sex offender shall retain one copy of the form and send two copies to the division which shall provide the information to the law enforcement agency having jurisdiction where the sex offender expects to reside within this state. No later than thirty days prior to the board making

a recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a

level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that 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 sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. It shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article to determine the level of

notification pursuant to subdivision six of section one hundred sixty-eight-1 of this article and whether such sex offender shall be designated 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. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any material submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. If available, facts proven at trial or elicited at the time of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court 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. Either party 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, that 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.

3. The division shall undertake an information campaign designed to provide information to officials and appropriate individuals in other states and United States possessions concerning the notification procedures required by this article. Such information campaign shall be ongoing, and shall include, but not be limited to, letters, notice forms and similar materials providing relevant information about this article and the specific procedures required to effect notification. Such materials shall include an address and telephone number which such officials and individuals in other states and United States possessions may use to obtain additional information.

4. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision two of this section.

§168-1. Board of examiners of sex offenders

1. There shall be a board of examiners of sex offenders which shall possess the powers and duties hereinafter specified. Such board shall consist of five members appointed by the governor. All members shall be employees of the department and shall be experts in the field of the behavior and treatment of sex offenders. The term of office of each member of such board shall be for six years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom he or she is to succeed. In the event of the inability to act of any member, the governor may appoint some competent informed person to act in his or her stead during the continuance of such disability.

2. The governor shall designate one of the members of the board as chairman to serve in

such capacity at the pleasure of the governor or until the member's term of office expires and a successor is designated in accordance with law, whichever first occurs.

3. Any member of the board may be removed by the governor for cause after an opportunity to be heard.

4. Except as otherwise provided by law, a majority of the board shall constitute a quorum for the transaction of all business of the board.

5. The board shall develop guidelines and procedures to assess the risk of a repeat offense by such sex offender and the threat posed to the public safety. Such guidelines shall be based upon, but not limited to, the following:

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

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

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

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

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

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

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

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

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

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

(c) conditions of release that minimize risk or re-offense, including but not limited to whether the sex offender is under supervision; receiving counseling, therapy or treatment; or residing in a 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.

6. Applying these guidelines, 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 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.

(a) If the risk of repeat offense is low, a level one designation shall be given to such sex offender.

In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which may include a photograph and description of the offender and which may include the name of the sex offender, approximate address based on sex offender's zip code, background information including the offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of

special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion.

(b) If the risk of repeat offense is moderate, a level two designation shall be given to such sex offender. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the exact name and any aliases used by the sex offender, exact address, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public. Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notification of such organizations in disseminating such information on level two sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools,

neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

(c) If the risk of repeat offense is high and there exists a threat to the public safety a level three designation shall be given to such sex offender. In such case, the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the sex offender's exact name and any aliases used by the offender, exact address, address of the offender's place of employment, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public. Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notification of such organizations in disseminating such information on level three sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood

watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

7. Upon request by the court, pursuant to section one hundred sixty-eight-o of this article, the board shall provide an updated report pertaining to the sex offender petitioning for relief of the duty to register or for a modification of his or her level of notification.

8. A failure by a state or local agency or the board to act or by a court to render a determination within the time period specified in this article shall not affect the obligation of the sex offender to register or verify under this article nor shall such failure prevent a court from making a determination regarding the sex offender's level of notification and whether such offender is required by law to be registered for a period of twenty years or for life. Where a court is unable to make a determination prior to the date scheduled for a sex offender's discharge, parole, release to post-release supervision or release, it shall adjourn the hearing until after the offender is discharged, paroled, released to post-release supervision or released, and shall then expeditiously complete the hearing and issue its determination.

§168-m. Review

Notwithstanding any other provision of law to the contrary, any state or local correctional facility, hospital or institution, district attorney, law enforcement agency, probation department, state board of parole, court or child protective agency shall forward relevant information pertaining to a sex offender to be discharged, paroled, released to post-release supervision or released to the board for review no later than one hundred twenty days prior to the release or discharge and the board shall make recommendations as provided in subdivision six of section one hundred sixty-eight-l of this article within sixty days of receipt of the information. Information may include, but may not be limited to all or a portion of the arrest file, prosecutor's file, probation or parole file, child

protective file, court file, commitment file, medical file and treatment file pertaining to such person. Such person shall be permitted to submit to the board any information relevant to the review. Upon application of the sex offender or the district attorney, the court shall seal any portion of the board's file pertaining to the sex offender that contains material that is confidential under any state or federal law; provided, however, that in any subsequent proceedings in which the sex offender who is the subject of the sealed record is a party and which requires the board to provide a recommendation to the court pursuant to this article, such sealed record shall be available to the sex offender, the district attorney, the court and the attorney general where the attorney general is a party, or represents a party, in the proceeding.

§168-n. Judicial determination

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 established in subdivision five of section one hundred sixty-eight-1 of this article after receiving a recommendation from the board pursuant to section one hundred sixty-eight-1 of this article.
2. In addition, applying the guidelines established in subdivision five of section one hundred sixty-eight-1 of this article, the sentencing court shall also make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-eight-1 of this article. Both determinations of the sentencing court shall be made thirty calendar days prior to discharge, parole or release.
3. No later than thirty days prior to the board's recommendation, the sex offender shall be notified that his or her case is under review and

that he or she is permitted to submit to the board any information relevant to the review. Upon receipt of the board's recommendation, the sentencing court shall determine whether the sex offender was previously found to be eligible for assigned counsel in the underlying case. Where such a finding was previously made, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. At least twenty days prior to the determination proceeding, the sentencing court shall notify the district attorney, the sex offender and the sex offender's counsel, in writing, of the date of the determination proceeding and shall also provide the district attorney, the sex offender and the sex offender's counsel with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The written notice to the sex offender shall also advise the offender that he or she has a right to a hearing prior to the court's determination, and that he or she has the right to be represented by counsel at the hearing. If counsel has been assigned to represent the offender at the determination proceeding, the notice shall also provide the name, address and telephone

number of the assigned counsel. Where counsel has not been assigned, the notice shall advise the sex offender that counsel will be appointed if he or she is financially unable to retain counsel, and 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 sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any materials submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed

established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court 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. Either party 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, that 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.

4. Upon determination that the risk of repeat offense and threat to public safety is high, the sentencing court shall also notify the division of such fact for the purposes of section one hundred sixty-eight-q of this article.

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, 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.

6. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision three of this section.

§168-o. Petition for relief or modification

1. Any sex offender who is classified as a level two risk, and who has not been designated a sexual predator, or a sexually violent offender, or

a predicate sex offender, who is required to register or verify pursuant to this article and who has been registered for a minimum period of thirty years may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court or by the court which made the determination regarding duration of registration and level of notification. The sex offender shall bear the burden of proving by clear and convincing evidence that his or her risk of repeat offense and threat to public safety is such that registration or verification is no longer necessary. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to this article upon conviction of any offense requiring registration in the future. Such a petition shall not be considered more than once every two years. In the event that the sex offender's petition for relief 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, that 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.

2. Any sex offender required to register or verify pursuant to this article may petition the sentencing court or the court which made the determination regarding the level of notification for an order modifying the level of notification. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The sex offender shall bear the burden of proving the facts supporting the requested modification 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 modify the level of notification 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, that 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.

3. The district attorney may file a petition to modify the level of notification for a sex offender with the sentencing court or with the court which made the determination regarding the level of notification, where the sex offender (a) has been convicted of a new crime, or there has been a determination after a proceeding pursuant to section 410.70 of the criminal procedure law or section two hundred fifty-nine-i of the executive law that the sex offender has violated one or more conditions imposed as part of a sentence of a conditional discharge, probation, parole or post-release supervision for a designated crime, and (b) the conduct underlying the new crime or the violation is of a nature that indicates an increased risk of a repeat sex offense. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The district attorney shall bear the burden of proving the facts supporting the requested modification, by clear and convincing evidence. In the event that the district attorney's petition is granted, the sex offender 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 offender upon the ground that he or she is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may proceed as a poor person, pursuant to article eighteen-B of the county law.

4. Upon receipt of a petition submitted pursuant to subdivision one, two or three 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.

§168-p. Special telephone number

1. Pursuant to section one hundred sixty-eight-b of this article, the division shall also operate a telephone number that members of the public may call free of charge and inquire whether a named individual required to register pursuant to this article is listed. The division shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the relevant information according to risk as described in subdivision six of section one hundred sixty-eight-1 of this article. The division shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (a) an exact street address, including apartment number, driver's license number or birth date, along with additional information that may include social security number, hair color, eye color, height, weight, distinctive markings, ethnicity; or (b) any combination of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, other identifying characteristics shall be provided. Any information identifying the victim by name, birth date, address or relation to the person listed by the division shall be excluded by the division.

2. When the telephone number is called, a preamble shall be played which shall provide the following information:

- (a) notice that the caller's telephone number will be recorded;
- (b) that there is no charge for use of the telephone number;
- (c) notice that the caller is required to identify himself or herself to the operator and provide current address and shall be maintained in a written record;
- (d) notice that the caller is required to be eighteen years of age or older;
- (e) a warning that it is illegal to use information

obtained through the telephone number to commit a crime against any person listed or to engage in illegal discrimination or harassment against such person;

(f) notice that the caller is required to have the birth date, driver's license or identification number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person;

(g) a statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities;

(h) a statement that an information package which will include a description of the law and sex abuse and abduction prevention materials is available upon request from the division. Such information package shall include questions and answers regarding the most commonly asked questions about the sex offender registration act, and current sex abuse and abduction prevention material.

2-a. (a) The division shall establish a program allowing non-profit and not-for-profit youth services organizations to pre-register with the division for use of the telephone number. Pre-registration shall include the identification of up to two officials of the organization who may call the telephone number and obtain information on behalf of the organization. A pre-registered certificate issued under this subdivision shall be valid for two years, unless earlier revoked by the division for good cause shown. No fee shall be charged to an applicant for the issuance of a pre-registered certificate pursuant to this subdivision.

(b) An organization granted a pre-registered certificate pursuant to this subdivision may, upon calling the telephone number, inquire whether multiple named individuals are listed on the sex offender registry. Notwithstanding any per call limitation the division may place on calls by private individuals, the division shall allow such pre-registered organizations to inquire about up to twenty prospective coaches, leaders or volunteers in each call to the

telephone number.

(c) For purposes of this subdivision, "youth services organization" shall mean a formalized program operated by a corporation pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law that functions primarily to: (a) provide children the opportunity to participate in adult-supervised sporting activities; or (b) match children or groups of children with adult volunteers for the purpose of providing children with positive role models to enhance their development.

3. Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the telephone number, the attorney general, any district attorney or any person aggrieved by the misuse of the number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law. Such person or group of persons shall be subject to a fine of not less than five hundred dollars and not more than one thousand dollars.

4. The division shall submit to the legislature an annual report on the operation of the telephone number. The annual report shall include, but not be limited to, all of the following:

- (a) number of calls received;
- (b) a detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section;
- (c) number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed;
- (d) number of persons listed; and
- (e) a summary of the success of the telephone number program based upon selected factors.

§168-q. Subdirectory; internet posting.

§ 168-q. Subdirectory; internet posting. 1. The division shall maintain a subdirectory of level two and three sex offenders. The subdirectory shall include the exact address, address of the offender's place of employment and photograph of the sex offender along with the following information, if available: name, physical description, age and distinctive markings. Background information including all of the sex offender's crimes of conviction that require him or her to register pursuant to this article, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and a description of special conditions imposed on the sex offender shall also be included. The subdirectory shall have sex offender listings categorized by county and zip code. Such subdirectory shall be made available at all times on the internet via the division homepage. Any person may apply to the division to receive automated e-mail notifications whenever a new or updated subdirectory registration occurs in a geographic area specified by such person. The division shall furnish such service at no charge to such person, who shall request e-mail notification by county and/or zip code on forms developed and provided by the division. E-mail notification is limited to three geographic areas per e-mail account.

2. Any person who uses information disclosed pursuant to this section in violation of the law shall in addition to any other penalty or fine imposed, be subject to a fine of not less than five hundred dollars and not more than one thousand dollars. Unauthorized removal or duplication of the subdirectory from the offices of local, village or city police department shall be punishable by a fine not to exceed one thousand dollars. In addition, the attorney general, any district attorney, or any person aggrieved is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or

temporary injunction, restraining order, or other order against the person or group of persons responsible for such action. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law.

§168-r. Immunity from liability

1. No official, employee or agency, whether public or private, shall be subject to any civil or criminal liability for damages for any discretionary decision to release relevant and necessary information pursuant to this section, unless it is shown that such official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

2. Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against any official, employee or agency, whether public or private, for failing to release information as authorized in this section unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.

§168-s. Annual report

The division shall on or before February first in each year file a report with the governor, and the legislature detailing the program, compliance with provisions of this article and effectiveness of the provisions of this article, together with any recommendations to further enhance the intent of this article.

§168-t. Penalty

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. Any sex offender who violates the provisions of section one hundred sixty-eight-v of this article shall be guilty of a class A misdemeanor upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any such failure to register or verify may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law or the basis for revocation of probation pursuant to article four hundred ten of the criminal procedure law.

§168-u. Unauthorized release of information

The unauthorized release of any information required by this article shall be a class B misdemeanor.

§168-v. Prohibition on use of motor vehicles

No person who has been designated a level two or level three sex offender under this article (registration of sex offenders act) shall operate a motor vehicle as defined by § 175 of the vehicle and traffic law for a period of twenty years, or as long as that person is required to remain registered, whichever is shorter.

§168-w. Separability

If any section of this article, or part thereof shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

§ 2. The state's Executive Law, § 259–c, providing for the duties of the Board of Parole, shall be amended as follows:

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

offender pursuant to subdivision six of section one hundred sixty-eight-1 of the correction law, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined in subdivision fourteen of section 220.00 of the penal law, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her parole officer and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for the limited purposes authorized by the parole officer and superintendent or chief officer. Nothing in this subdivision shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender.

15. Notwithstanding any other provision of law to the contrary, where a person is serving a sentence for an offense for which registration as a sex offender is required pursuant to subdivision two or three of section one hundred sixty-eight-a of the correction law, and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-1 of the correction law or the internet was used to facilitate the commission of the crime, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as mandatory conditions of such

release, that such sentenced offender shall be prohibited from using the internet to access pornographic material, access a commercial social networking website, communicate with other individuals or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen when such offender is over the age of eighteen, provided that the board may permit an offender to use the internet to communicate with a person under the age of eighteen when such offender is the parent of a minor child and is not otherwise prohibited from communicating with such child. Nothing in this subdivision shall be construed as restricting any other lawful condition of supervision that may be imposed on such sentenced offender. As used in this subdivision, a “commercial social networking website” shall mean any business, organization or other entity operating a website that permits persons under eighteen years of age to be registered users for the purpose of establishing personal relationships with other users, where such persons under eighteen years of age may: (i) create web pages or profiles that provide information about themselves where such web pages or profiles are available to the public or to other users; (ii) engage in direct or real time communication with other users, such as a chat room or instant messenger; and (iii) communicate with persons over eighteen years of age; provided, however, that, for purposes of this subdivision, a commercial social networking website shall not include a website that permits users to engage in such other activities as are not enumerated herein.

16. Notwithstanding any other provision of law to the contrary, where a person serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense or such

person has been designated a level two or three sex offender pursuant to subdivision six of section one hundred sixty-eight-1 of the correction law, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from operating a motor vehicle as that term is defined in § 175 of the vehicle and traffic law for a period of twenty years from the date of release, or until such offender is no longer required to register as a sex offender, in accordance with § 168 of the corrections law, whichever is shorter; provided however, that such sentenced offender may, with the written authorization of his or her parole officer and the commissioner of the department of motor vehicles. Nothing in this subdivision shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender.

§ 3. This act shall take effect 180 days after the date on which it shall have become a law, provided, however, that any rules and regulations necessary for the timely implementation of this act on such date shall be promulgated immediately.