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# CHAIRMAN'S MEMORANDUM

## NO. 02-2012

### June 12, 2012

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TO: SHERIFFS, CHIEF ADMINISTRATIVE OFFICERS, AND COMMISSIONERS OF CORRECTION

RE: Update from Board of Examiners of Sex Offenders

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The Board of Examiners of Sex Offenders has asked the State Commission of Correction to forward the attached update to local correctional facilities. This update pertains to notification to the Board for the registration of convicted sex offenders.

If you have any questions regarding the attached, please call the Board of Examiners of Sex Offenders at (518) 457-4185.

**Thomas A. Beilein, Chairman**

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**New York State Commission of Correction  
Alfred E. Smith State Office Building  
80 S. Swan Street, 12<sup>th</sup> Floor  
Albany, NY 12210-8001  
(518) 485-2346**

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**Thomas A. Beilein, Chairman  
Phyllis Harrison-Ross, M.D., Commissioner**



State of New York  
Board of Examiners of Sex Offenders  
4 Tower Place  
Albany, New York 12203-3764

Date: June 1, 2012  
To: Local Correctional Facilities  
From: Board of Examiners of Sex Offenders

In an effort update local correctional facilities on statutory changes and to ensure community safety, the Board would like to take this opportunity to convey the following information:

- ❖ The Board often receives notification of convicted sex offenders requiring registration after the offender has been released from jail and sometimes not at all.

**Pursuant to §168-m** "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-1 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."

In compliance with statute, kindly notify the Board 120 days in advance of release or upon sentencing in cases where the offender is sentenced to a short jail term. If there is a plea agreement in place and it is anticipated that the offender will be sentenced to time served, the Board should be notified immediately. Any official records pertaining to the offense conduct (such as a PSI) which are in your possession should be forwarded to the Board in order to expedite the processing of the case. The Board should **not** be notified of offenders being transferred to the NYS Department of Corrections and Community Supervision (DOCCS) to serve their sentence.

- ❖ **The Board is sometimes referred cases which are not required to register.**

For your convenience, an updated list of registerable offenses is attached. Please pay close attention to dates the offenses were committed and the ages of the victims, as there are caveats which distinguish some offenses from being registerable from those that are not. For offenses which require the victim to be less than 17 or 18 years of age in order to be registerable, it would be helpful if personnel responsible for registration at the jail could determine the victim's age before sending notification. In these cases, if the victim is an adult, registration would only be required if there is a previous sex offense conviction. Offenders adjudicated Youthful Offender or Juvenile Delinquent are not required to register.

Please feel free to contact us if you have any questions about the registerability of offenses or concerns (518) 457-4185.

## CONVICTIONS FOR SEX OFFENSES (November 2011)

PENAL LAW STATUTE	OFFENSE CLASS	OFFENSE	REGISTERABLE	DOUBLE PROBATION	DNA REQUIRED	MANDATORY SURCHARGE	CRIME VICTIM ASSISTANCE FEE	DNA DATABANK FEE	SUPPLEMENTAL SEX OFFENDER VICTIM FEE	SEX OFFENDER REGISTRATION FEE	PERSON REQUIRED TO REGISTER
120.70 **	E Felony	luring a child	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have committed the offense on or after 10/04/2008
130.20	A Misd	sexual misconduct	Yes	Yes	Yes	\$175	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 3/1/02
130.25	E Felony	rape in the third degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.30	D Felony	rape in the second degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.35	B Felony	rape in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96

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130.40	E Felony	criminal sexual act in the third degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.45	D Felony	criminal sexual act in the second degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.50	B Felony	criminal sexual act in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.52	A Misd	forcible touching	Yes, if the victim is less than 18 years of age or where the defendant has a prior conviction for a sex offense	Yes	Yes	\$175	\$25	\$50	\$1,000	\$50. If the victim is less than 18 years of age or where the defendant has a prior conviction for a sex offense	Offender must have committed the offense on or after 3/11/02

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130.53	E Felony	persistent sexual abuse	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 3/11/02 or have been convicted on or after 3/11/02
130.55	B Misd	sexual abuse in the third degree	Yes, if the victim is less than 18 years of age or where the defendant has a prior conviction for a sex offense	No	Yes	\$175	\$25	\$50	\$1,000	\$50 If the victim is less than 18 years of age or where the defendant has a prior conviction for a sex offense	Offender must have committed the offense on or after 3/11/02
130.60	A Misd	sexual abuse in the second degree	Yes	Yes	Yes	\$175	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.65	D Felony	sexual abuse in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96

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130.65-a	E Felony	aggravated sexual abuse in the fourth degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 3/11/02 or have been convicted on or after 3/11/02
130.66	D Felony	aggravated sexual abuse in the third degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
130.67	C Felony	aggravated sexual abuse in the second degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
130.70	B Felony	aggravated sexual abuse in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96

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130.75	B Felony	course of sexual conduct against a child in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
130.80	D Felony	course of sexual conduct against a child in the second degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
130.85	E Felony	female genital mutilation	No	Yes	Yes	\$300	\$25	\$50	\$1,000	No	Not required
130.90	D Felony	facilitating a sex offense with a controlled substance	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 3/11/02 or have been convicted on or after 3/11/02
130.91	Various felonies	sexually motivated felony	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 4/13/07
130.95	A-II Felony	predatory sexual assault	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 6/23/06

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130.96	A-II Felony	predatory sexual assault against a child	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 6/23/06
135.05	A Misd	unlawful imprisonment in the second degree	Yes, if the victim is less than 17 years old and the offender is not the parent of the victim	No	Yes	\$175	\$25	\$50	No	\$50 If the victim is less than 17 years old and the offender is not the parent of the victim	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
135.10	E Felony	unlawful imprisonment in the first degree	Yes, if the victim is less than 17 years old and the offender is not the parent of the victim	No	Yes	\$300	\$25	\$50	No	\$50 If the victim is less than 17 years old and the offender is not the parent of the victim	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
135.20	B Felony	kidnapping in the second degree	Yes, if the victim is less than 17 years old and the offender is not the parent of the victim	No	Yes	\$300	\$25	\$50	No	\$50 If the victim is less than 17 years old and the offender is not the parent of the victim	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96



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135.25	A-1 Felony	kidnapping in the first degree	Yes, if the victim is less than 17 years old and the offender is not the parent of the victim	No	Yes	\$300	\$25	\$50	No	\$50 If the victim is less than 17 years old and the offender is not the parent of the victim	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
230.04	A Misd	patronizing a prostitute in the third degree	Yes, if person patronized is less than 17 years old	No	Yes	\$175	\$25	\$50	No	\$50 If person patronized is less than 17 years old	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
230.05	E Felony	patronizing a prostitute in the second degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
230.06	D Felony	patronizing a prostitute in the first degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00

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230.30(2)	C Felony	promoting prostitution in the second degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
230.32	B Felony	promoting prostitution in the first degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/1/00 or have been convicted on or after 1/1/00
230.33	B Felony	compelling prostitution	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 6/7/06 or have been convicted on or after 6/7/06
230.34	B Felony	sex trafficking	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have committed the offense on or after 11/1/07

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235.22	D Felony	disseminating indecent material to minors in the first degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have been incarcerated or under parole or probation supervision on 3/11/02 or have been convicted on or after 3/11/02
250.45(2), (3) & (4)	E Felony	unlawful surveillance in the second degree	Yes, unless trial court finds registration would be unduly harsh and inappropriate	No	Yes	\$300	\$25	\$50	No	\$50 Unless trial court finds registration would be unduly harsh and inappropriate	Offender must have committed the offense on or after 8/11/03. Conviction for "Attempt" only registerable if sentenced or under supervision on or after 9/23/11.
250.50	D Felony	unlawful surveillance in the first degree	Yes	No	Yes	\$300	\$25	\$50	No	\$50	Offender must have committed the offense on or after 8/11/03
255.25	E Felony	incest in the third degree (formerly incest)	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
255.26	D Felony	incest in the second degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 11/1/06

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255.27	B Felony	incest in the first degree	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have committed the offense on or after 11/1/06
263.05	C Felony	use of a child in a sexual performance	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
263.10	D Felony	promoting an obscene sexual performance by a child	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
263.11	E Felony	possessing an obscene sexual performance by a child	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96

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263.15	D Felony	promoting a sexual performance by a child	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
263.16	E Felony	possessing a sexual performance by a child	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been incarcerated or under parole or probation supervision on 1/21/96 or have been convicted on or after 1/21/96
263.30	B Felony	facilitating a sexual performance by a child with a controlled substance or alcohol	Yes	Yes	Yes	\$300	\$25	\$50	\$1,000	\$50	Offender must have been convicted on or after 11/01/08.

\*\* If the underlying offense constituted a class A or a class B felony, then the offense of luring a child shall be deemed respectively, a class C felony or class D felony.

Penal Law §60.35 Mandatory surcharge, sex offender registration fee, DNA databank fee, supplemental sex offender victim fee and crime victim assistance fee required in certain cases.

Penal Law §60.35(9) provides that in the event the proceeding is in a town or village court, such court shall add an additional \$5 to the other surcharges imposed.

Penal Law §60.35(10) states that the provisions of this section shall apply to sentences imposed upon a youthful offender finding.

**Criminal Procedure Law §420.35** Mandatory surcharge and crime victim assistance fee; applicability to sentences mandating payment of fines.

Criminal Procedure Law §420.35(2) provides that under no circumstances shall the mandatory surcharge, sex offender registration fee, DNA databank fee or the crime victim assistance fee be waived provided, however that a court may waive the crime victim assistance fee if such defendant is an eligible youth as defined in subdivision two of section 720.10 of this chapter, and the imposition of such fee would work an unreasonable hardship on the defendant, his or her immediate family, or any other person who is dependent on such defendant for financial support.

Registration as a sex offender is required upon a conviction of a registerable offense, or a conviction for an attempt to commit a registerable offense, or for a conviction of, or conviction for an attempt to commit, a registerable offense as a hate crime or a crime of terrorism.

Registration as a sex offender is also required upon a conviction of a certain offense, or a conviction for an attempt or conspiracy to commit a certain offense, as a sexually motivated felony pursuant to Penal Law § 130.91.