

RULE TEXT – NOTICE OF ADOPTION

DPCA SEX OFFENDER HOUSING REGULATIONS

A new Chapter III and Part 365 of Title 9 NYCRR are added to read as follows:

Chapter III. Sex Offender Management

Part 365. Sex Offender Housing Procedural Guidelines

Section 365.1 Objective.

This Part's objective is to establish procedural guidelines that delineate criteria and which promote consistent probation practices with respect to the residency of certain sex offenders under probation supervision.

Section 365.2 Applicability.

This Part is applicable to the supervision of any individual designated a Level 2 or 3 sex offender pursuant to the Sex Offender Registration Act (SORA) and sentenced to a period of probation.

Section 365.3 Statement of purpose.

(a) Chapter 568 of the laws of 2008 requires the Division of Parole (DOP), the Division of Probation and Correctional Alternatives (DPCA), and the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to provide guidance concerning the placement and/or approval of housing for certain sex offenders.

(b) The State has previously enacted laws concerning sex offenders, including the Sex Offender Registration Act, the Sex Offender Management and Treatment Act, the Electronic Security and Targeting of On-Line Predators Act (e-STOP) and laws restricting certain sex offenders who are under probation or parole supervision from entering school grounds. Chapter 568 of the laws of 2008 continues the State's efforts in the area of sex offender management and

specifically in the area of the placement and housing of sex offenders. Sex offender management, and the placement and housing of sex offenders, are areas that have been, and will continue to be, matters addressed by the State. These regulations further the State's coordinated and comprehensive policies in these areas, and are intended to provide further guidance to relevant state and local agencies in applying the State's approach.

(c) Public safety is a primary concern and these regulations are intended to better protect children, vulnerable populations and the general public from sex offenders. The State's coordinated and comprehensive approach also recognizes the necessity to provide emergency shelter to individuals in need, including those who are sex offenders, and the importance of stable housing and support in allowing offenders to live in and re-enter the community and become law-abiding and productive citizens. These regulations are based upon, and are intended to further best practices and effective strategies to achieve these goals.

(d) In implementing this statute and the State's comprehensive approach, DOP, DPCA, OTDA and the Division of Criminal Justice Services' Office of Sex Offender Management (DCJS/ OSOM) recognize that:

- (i) Not all sex offenders are equally dangerous. Some sex offenders may pose a high risk of committing a new sexual crime; others may pose only a low risk.
- (ii) All reasonable efforts should be made in to avoid an ill-advised concentration of sex offenders in certain neighborhoods and localities. What constitutes such a concentration will depend on many factors, and may vary depending on housing availability and the locality and community. In addition, it is sometimes safer to house sex offenders together. Law enforcement, probation, and parole officers may more effectively monitor offenders, and service providers may more easily

offer transitional services to offenders in these congregate settings. Further, some social service officials and departments rely on congregate housing for sex offenders who seek emergency shelter because of the limited, or lack of other housing options available for this population. All public officials who are responsible for finding or approving housing for sex offenders should recognize that an over-concentration of sex offenders may create risks and burdens on the surrounding community, and that their responsibility is to make judgments that are reasonable under the circumstances.

- (iii) All social service districts are required by statute, regulation and directive to arrange temporary housing assistance for eligible homeless individuals, including those who are sex offenders.
- (iv) To reduce recidivism it is important that offenders be able to re-enter society and become productive and law-abiding citizens whenever possible. A stable living situation and access to employment and support services are important factors that can help offenders to successfully re-enter society.
- (v) Maintaining and/or finding suitable housing for sex offenders is an enormous challenge that impacts all areas of the State. Offenders reside in all regions of the state and may have long-established residences in their respective communities. Even offenders who do not have such long-established relationships are often discharged from prison to the community where they previously lived. As a result, it is not appropriate for any one community or county to bear an inappropriate burden in housing sex offenders because another community has attempted to shift its responsibility for those offenders onto other areas of the

State. The proliferation of local ordinances imposing residency restrictions upon sex offenders, while well-intentioned, have made it more challenging for the State and local authorities to address the difficulties in finding secure and appropriate housing for sex offenders.

- (vi) Decisions as to the housing and supervision of sex offenders should take into account all relevant factors and no one factor will necessarily be dispositive. These factors should include, but not be limited to, the factors enumerated in the statute, the risk posed by the offender, the nature of the underlying offense, whether housing offenders together or apart is safer and more feasible, the most effective method to supervise and provide services to offenders, and the availability of appropriate housing, employment, treatment and support.

Section 365.4 Procedures.

1. When investigating and/or approving a residence of any such SORA Level 2 or 3 probationer, the probation department shall consider the following:
 - (a) the location of other sex offenders required to register under SORA, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;
 - (b) the number of registered sex offenders residing at a particular property;
 - (c) the proximity of entities with vulnerable populations;
 - (d) accessibility to family members, friends, or other supportive services including, but not limited to, locally available sex offender treatment programs with preference for placement of such individuals into programs that have

demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and

- (e) the availability of permanent, stable housing in order to reduce the likelihood that any such probationer will be transient.

In addition, probation departments should consider the following factors when information is available to them:

- (a) known victim(s) address(es), age(s), and any relationship(s) to the probationer;
 - (b) known existence of and adherence to any order of protection(s) against the probationer and restrictions as to residence/distance;
 - (c) known presence of persons under the age of 18 in the residence or proposed residence;
2. The probation department should summarize its findings and make a recommendation to the court as to the appropriateness of the probationer's residence or proposed residence based on the aforementioned factors, the consideration of the probationer's legal history, adherence to any existing terms and conditions of probation supervision, and compliance with SORA, where applicable. In making a recommendation the probation department should consider all factors, and not consider any one factor as dispositive.
 3. Whenever a probation department is supervising a SORA Level 2 or 3 probationer and the individual seeks to relocate to another residence, the department should conduct an investigation and consider the aforementioned factors. Where judicial approval is required or desired, the probation department should summarize its findings to the court of jurisdiction and make a recommendation to the court as to the appropriateness of the

proposed residence based on the factors and consideration of his/her legal history, adherence to terms and conditions of probation supervision, and compliance with SORA.

4. Where a probation department learns of a probationer's change of address and where this has occurred without prior notification, the department should conduct an investigation. It should evaluate the appropriateness of the new residence and whether a violation of probation should be considered. Where judicial approval and/or action is required or desired, the department should summarize its findings to the court of jurisdiction and make a recommendation to the court as to the appropriateness of the residence or proposed residence based on the factors and consideration of his/her legal history, adherence to terms and conditions of probation supervision, and compliance with SORA.