

11293

I N A S S E M B L Y

May 25, 2010

Introduced by M. of A. SALADINO, MONTESANO, RAI, McDONOUGH -- Multi-Sponsored by -- M. of A. TEDISCO -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to eliminating the alternative of strict and intensive supervision and treatment for sex offenders requiring civil management; and to repeal section 10.11 of the mental hygiene law and subdivision 9-a of section 259-a of the executive law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (c) of section 10.01 of the mental hygiene law,
2 as added by chapter 7 of the laws of 2007, is amended to read as
3 follows:
4 (c) That [for other sex offenders, it can be effective and appropriate
5 to provide treatment in a regimen of strict and intensive outpatient
6 supervision. Accordingly, civil commitment should be only one element in
7 a range of responses to the need for treatment of sex offenders. The]
8 THE goal of a comprehensive system should be to protect the public,
9 reduce recidivism, and ensure offenders have access to proper treatment.
10 S 2. Subdivisions (q), (r) and (s) of section 10.03 of the mental
11 hygiene law, as added by chapter 7 of the laws of 2007, are amended to
12 read as follows:
13 (q) "Sex offender requiring civil management" means a detained sex
14 offender who suffers from a mental abnormality. A sex offender requiring
15 civil management can, as determined by procedures set forth in this
16 article, be [either (1)] a dangerous sex offender requiring confinement
17 [or (2) a sex offender requiring strict and intensive supervision].
18 (r) ["Sex offender requiring strict and intensive supervision" means a
19 detained sex offender who suffers from a mental abnormality but is not a
20 dangerous sex offender requiring confinement.
21 (s)] "Sexually motivated" means that the act or acts constituting a
22 designated felony were committed in whole or in substantial part for the
23 purpose of direct sexual gratification of the actor.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD17508-01-0

1 S 3. Subdivision (f) of section 10.07 of the mental hygiene law, as
2 added by chapter 7 of the laws of 2007, is amended to read as follows:

3 (f) If the jury, or the court if a jury trial is waived, determines
4 that the respondent is a detained sex offender who suffers from a mental
5 abnormality, then the court shall consider whether the respondent is a
6 dangerous sex offender requiring confinement [or a sex offender requir-
7 ing strict and intensive supervision]. The parties may offer additional
8 evidence, and the court shall hear argument, as to that issue. If the
9 court finds by clear and convincing evidence that the respondent has a
10 mental abnormality involving such a strong predisposition to commit sex
11 offenses, and such an inability to control behavior, that the respondent
12 is likely to be a danger to others and to commit sex offenses if not
13 confined to a secure treatment facility, then the court shall find the
14 respondent to be a dangerous sex offender requiring confinement. In such
15 case, the respondent shall be committed to a secure treatment facility
16 for care, treatment, and control until such time as he or she no longer
17 requires confinement. [If the court does not find that the respondent is
18 a dangerous sex offender requiring confinement, then the court shall
19 make a finding of disposition that the respondent is a sex offender
20 requiring strict and intensive supervision, and the respondent shall be
21 subject to a regimen of strict and intensive supervision and treatment
22 in accordance with section 10.11 of this article.] In making a finding
23 [of disposition], the court shall consider [the conditions that would be
24 imposed upon the respondent if subject to a regimen of strict and inten-
25 sive supervision, and] all available information about the prospects for
26 the respondent's possible re-entry into the community.

27 S 4. Subdivision (g) of section 10.08 of the mental hygiene law, as
28 added by chapter 7 of the laws of 2007, is amended to read as follows:

29 (g) In preparing for or conducting any hearing or trial pursuant to
30 the provisions of this article, and in preparing any petition under the
31 provisions of this article, the respondent shall have the right to have
32 counsel represent him or her, provided that the respondent shall not be
33 entitled to appointment of counsel prior to the time provided in section
34 10.06 of this article. The attorney general shall represent the state.
35 Any relevant written reports of psychiatric examiners shall be admissi-
36 ble, regardless of whether the author of the report is called to testi-
37 fy, so long as they are certified pursuant to subdivision (c) of rule
38 forty-five hundred eighteen of the civil practice law and rules, in any
39 proceeding or hearing held pursuant to subdivision (g) or (h) of section
40 10.06 of this article[, paragraph two of subdivision (a), or paragraph
41 four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11
42 of this article]. In all other proceedings or hearings held pursuant to
43 this article, such admissibility shall require a showing of the author's
44 unavailability to testify, or other good cause. All plea minutes and
45 prior trial testimony from the underlying criminal proceeding, and
46 records from previous proceedings under this article, shall be admissi-
47 ble. Each witness, whether called by the attorney general or the
48 respondent, must, unless he or she would be authorized to give unsworn
49 evidence at a trial, testify under oath, and may be cross-examined. The
50 respondent may, as a matter of right, testify in his or her own behalf,
51 call and examine other witnesses, and produce other evidence in his or
52 her behalf. The respondent may not, however, cause a subpoena to be
53 served on the person against whom the sex offense was committed or
54 alleged to have been committed by the respondent, except upon order of
55 the court for good cause shown. Either party may request closure of the
56 courtroom, or sealing of papers, for good cause shown.

1 S 5. Subdivisions (e), (f) and (h) of section 10.09 of the mental
2 hygiene law, as added by chapter 7 of the laws of 2007, are amended to
3 read as follows:

4 (e) If, at any time, the commissioner determines that the respondent
5 no longer is a dangerous sex offender requiring confinement, the commis-
6 sioner shall petition the court for discharge of the respondent [or for
7 the imposition of a regimen of strict and intensive supervision and
8 treatment]. The petition shall be served upon the attorney general and
9 the respondent, and filed in the supreme or county court where the
10 person is located. The court, upon review of the petition, shall either
11 order the requested relief or order that an evidentiary hearing be held.

12 (f) The respondent may at any time petition the court for discharge
13 [and/or release to the community under a regimen of strict and intensive
14 supervision and treatment]. Upon review of the respondent's petition,
15 other than in connection with annual reviews as described in subdivi-
16 sions (a), (b) and (d) of this section, the court may order that an
17 evidentiary hearing be held, or may deny an evidentiary hearing and deny
18 the petition upon a finding that the petition is frivolous or does not
19 provide sufficient basis for reexamination prior to the next annual
20 review. If the court orders an evidentiary hearing under this subdivi-
21 sion, the attorney general shall have the burden of proof as to whether
22 the respondent is currently a dangerous sex offender requiring confine-
23 ment.

24 (h) At the conclusion of an evidentiary hearing, if the court finds by
25 clear and convincing evidence that the respondent is currently a danger-
26 ous sex offender requiring confinement, the court shall continue the
27 respondent's confinement. [Otherwise the court, unless it finds that the
28 respondent no longer suffers from a mental abnormality, shall issue an
29 order providing for the discharge of the respondent to a regimen of
30 strict and intensive supervision and treatment pursuant to section 10.11
31 of this article.]

32 S 6. Section 10.11 of the mental hygiene law is REPEALED.

33 S 7. Subdivision 9-a of section 259-a of the executive law is
34 REPEALED.

35 S 8. This act shall take effect on the thirtieth day after it shall
36 have become a law.