S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. SWEENEY, KOON, SCHIMMINGER, PHEFFER, GUNTHER, ABBATE, GALEF, COOK, HOOPER, ENGLEBRIGHT, FIELDS -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, COLTON, DESTITO, HAYES, JOHN, MAGEE, SCARBOROUGH, SEMINERIO, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, the penal law, the correction law and the mental hygiene law, in relation to treatment of sex offenders

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

Section 1. Short title. This act shall be known and may be cited as the "Sex Offender Community Safety Act".

S 2. Legislative findings and declaration. The legislature hereby finds and declares that sexual offenses are heinous, violent crimes that result in severe physical and emotional trauma for victims. The legislature further finds that there is a significant chance that certain sex offenders may repeat their crimes following a period of incarceration and that such recidivism is more likely if such offenders are not monitored and supervised on parole.

The legislature finds that intensive monitoring and lifetime parole supervision for sex offenders may prove effective in reducing sex offender recidivism, but that no comprehensive long term supervision of sex offenders has ever been provided in this state. The legislature hereby declares that intensive monitoring and lifetime parole supervision combined with community notification for New York offenders can offer some protection to our communities and may also prove effective in reducing offender recidivism.

S 3. The executive law is amended by adding three new sections 259-s, 259-t and 259-u to read as follows:

S 259-S. DEFINITION OF TERMS. AS USED IN THIS ARTICLE: 1. "DESIGNATED SEX OFFENDER" MEANS A PERSON WHO STANDS CONVICTED OF ANY ONE OR MORE OF THE FOLLOWING OFFENSES, PROVIDED THAT SUCH PERSON IS CURRENTLY UNDER

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

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SENTENCE FOR SUCH OFFENSE: (A) (I) A CONVICTION OF OR A CONVICTION FOR AN ATTEMPT TO COMMIT ANY OF THE PROVISIONS OF SECTIONS 130.25, 130.30, 130.40, 130.45, 130.60 AND 255.25 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; OR

(II) A CONVICTION OF AN OFFENSE OF THE LAW IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SUCH FELONY PROVIDED FOR IN SUBPARAGRAPH (I) OF THIS PARAGRAPH FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT IN EXCESS OF ONE YEAR OR A SENTENCE OF DEATH WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED; OR

(B) (I) A CONVICTION OF OR A CONVICTION FOR AN ATTEMPT TO COMMIT ANY OF THE PROVISIONS OF SECTIONS 130.35, 130.50, 130.65, 130.67, 130.70, 130.75 AND 130.80 OF THE PENAL LAW; OR

(II) A CONVICTION OF AN OFFENSE OF THE LAW IN ANY OTHER JURISDICTION OF AN OFFENSE WHICH INCLUDES ALL OF THE ESSENTIAL ELEMENTS OF ANY SUCH FELONY PROVIDED FOR IN SUBPARAGRAPH (I) OF THIS PARAGRAPH FOR WHICH A SENTENCE TO A TERM OF IMPRISONMENT IN EXCESS OF ONE YEAR OR A SENTENCE OF DEATH WAS AUTHORIZED AND IS AUTHORIZED IN THIS STATE IRRESPECTIVE OF WHETHER SUCH SENTENCE WAS IMPOSED.

2. "DESIGNATED SEX OFFENSE" MEANS ANY ONE OR MORE OF THE FELONIES DEFINED IN SUBDIVISION ONE OF THIS SECTION.

3. "RECIDIVIST SEX OFFENDER" MEANS A PERSON WHO STANDS CONVICTED OF ANY ONE OR MORE OF THE FELONIES DEFINED IN SUBDIVISION ONE OF THIS SECTION AFTER HAVING PREVIOUSLY BEEN SUBJECT TO ONE OR MORE PREDICATE FELONY CONVICTIONS, AS DEFINED IN SECTION 70.06 OF THE PENAL LAW, OR ONE OR MORE PREDICATE VIOLENT FELONY CONVICTIONS, AS DEFINED IN SECTION 70.04 OF THE PENAL LAW, WHERE SUCH PREDICATE FELONY OR PREDICATE VIOLENT FELONY CONVICTIONS WERE ALSO FOR AN OFFENSE DEFINED IN SUBDIVISION ONE OF THIS SECTION.

S 259-T. INTENSIVE PAROLE SUPERVISION OF DESIGNATED SEX OFFENDERS. THE RELEASE ON PAROLE OR CONDITIONAL RELEASE OF ANY INMATE WHO IS A DESIGNATED SEX OFFENDER OR RECIDIVIST SEX OFFENDER, AS DEFINED IN SECTION TWO HUNDRED FIFTY-NINE-S OF THIS ARTICLE, SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

1. ACTIVE PAROLE SUPERVISION SHALL BE REQUIRED FOR THE LIFE OF THE OFFENDER NOTWITHSTANDING ANY OTHER CONDITION OF PAROLE OR CONDITIONAL RELEASE.

2. PAROLE AND CONDITIONAL RELEASE SUPERVISION SHALL CONSIST OF A MINIMUM OF FIVE CONTACTS PER MONTH FOR THE FULL PERIOD OF SUPERVISION. PAROLE AND CONDITIONAL RELEASE SUPERVISION OF RECIDIVIST SEX OFFENDERS SHALL CONSIST OF A MINIMUM OF TWO CONTACTS PER WEEK FOR THE FULL PERIOD OF SUPERVISION.

3. ELECTRONIC SURVEILLANCE SHALL BE REQUIRED DURING AT LEAST THE FIRST SIXTY DAYS OF PAROLE OR CONDITIONAL RELEASE.

S 259-U. MANDATORY SEX OFFENDER TREATMENT AND COUNSELING. THE DIVISION OF PAROLE, IN CONSULTATION WITH THE COMMISSIONER OF MENTAL HEALTH, SHALL CREATE AND IMPLEMENT A MANDATORY SEX OFFENDER TREATMENT PROGRAM UTILIZING SUCH PROTOCOLS AS MIGHT BE RECOMMENDED BY THE COMMISSIONER OF MENTAL HEALTH. ANY OFFENDER WHO HAS BEEN CONVICTED OF A DESIGNATED SEX OFFENSE, AS PROVIDED FOR IN SECTION TWO HUNDRED FIFTY-NINE-T OF THIS ARTICLE, SHALL BE REQUIRED TO PARTICIPATE IN SUCH PROGRAM DURING THE PERIOD THEY ARE UNDER PAROLE SUPERVISION PROVIDED THAT THE DIVISION OF PAROLE MAY DETERMINE THAT ANY INDIVIDUAL OFFENDER CONVICTED OF A DESIGNATED SEX OFFENSE SHALL NOT PARTICIPATE IN SUCH PROGRAM IF IT FINDS SUCH OFFENDER

IS NOT AMENABLE TO TREATMENT. NOTHING IN THIS SECTION SHALL BE DEEMED TO PROHIBIT THE DIVISION OF PAROLE FROM ARRANGING FOR THE PROVISION OF TREATMENT AND/OR COUNSELING SERVICES PRIOR TO CONSULTATION WITH THE COMMISSIONER OF MENTAL HEALTH, OR BY CONTRACTING WITH AN INDEPENDENT ORGANIZATION EXPERIENCED IN THE RESEARCH, EVALUATION AND PROGRAM DEVELOPMENT OF A SEX OFFENDER TREATMENT PROGRAM.

S 4. The penal law is amended by adding a new section 70.09 to read as follows:

S 70.09 LIFETIME PAROLE.

ANY PERSON CONVICTED OF A VIOLATION OF ANY PROVISION OF SECTIONS 130.30, 130.35, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 AND 130.80 OF THIS CHAPTER SHALL, IN ADDITION TO THE SENTENCE OR FINE OTHERWISE AUTHORIZED BY LAW, BE SENTENCED TO LIFETIME PAROLE. NOTWITHSTANDING SECTION TWO HUNDRED FIFTY-NINE-J OF THE EXECUTIVE LAW SUCH SENTENCES SHALL NOT BE SUBJECT TO DISCHARGE BY THE BOARD OF PAROLE.

S 5. The correction law is amended by adding a new section 75 to read as follows:

S 75. SEX OFFENDER DISCHARGE PLANNING. PRIOR TO THE RELEASE ON PAROLE OR CONDITIONAL DISCHARGE OF A DESIGNATED SEX OFFENDER OR RECIDIVIST SEX OFFENDER, AS PROVIDED FOR IN SECTION TWO HUNDRED FIFTY-NINE-T OF THE EXECUTIVE LAW, THE DEPARTMENT, IN CONSULTATION WITH THE COMMISSIONER OF MENTAL HEALTH AND THE DIVISION OF PAROLE, SHALL PREPARE A DISCHARGE PLAN THAT INCLUDES A REVIEW OF THE OFFENDER'S PROGRESS IN ANY TREATMENT PROGRAM PROVIDED WHILE INCARCERATED, RECOMMENDATIONS FOR CONTINUED SUPERVISION AND TREATMENT IN THE COMMUNITY, AND THE NEED FOR ADDITIONAL SUPPORT SERVICES AND SUPERVISION.

S 6. Section 7.09 of the mental hygiene law is amended by adding a new subdivision (k) to read as follows:

(K) THE COMMISSIONER, IN COOPERATION WITH THE DIVISION OF PAROLE AND THE DEPARTMENT OF CORRECTIONAL SERVICES, SHALL DEVELOP A SEX OFFENDER TREATMENT PROTOCOL TO BE UTILIZED BY THE DIVISION OF PAROLE, PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-U OF THE EXECUTIVE LAW. SUCH PROTOCOL SHALL BE SUBMITTED TO THE DIVISION OF PAROLE NO LATER THAN JUNE FIRST, TWO THOUSAND TEN. THE COMMISSIONER SHALL ALSO OFFER SUCH TECHNICAL ASSISTANCE TO THE DEPARTMENT OF CORRECTIONAL SERVICES AS MAY BE REQUIRED TO IMPLEMENT THE PROVISIONS OF SECTION SEVENTY-FIVE OF THE CORRECTION LAW.

S 7. Paragraph (a) of subdivision 1 of section 803 of the correction law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate or determinate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, AND EXCEPT A PERSON CONVICTED OF A SEX OFFENSE CONTAINED IN ARTICLE ONE HUNDRED THIRTY OR SECTION 255.25, 263.05, 263.10 OR 263.15 OF THE PENAL LAW, may receive time allowance against the term or maximum term of his OR HER sentence imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

S 8. Subdivision 1 of section 803 of the correction law, as amended by chapter 126 of the laws of 1987, is amended to read as follows:

1. Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, AND EXCEPT A PERSON CONVICTED OF A SEX OFFENSE CONTAINED IN ARTICLE ONE HUNDRED THIRTY OR SECTION 255.25, 263.05, 263.10 OR 263.15 OF THE PENAL LAW, may receive time allowance against the maximum term or period of his OR HER sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

S 9. Subdivision 1 of section 804 of the correction law, as amended by chapter 145 of the laws of 1976, is amended to read as follows:

1. Every person confined in an institution serving a definite sentence of imprisonment EXCEPT THOSE INDIVIDUALS CONVICTED OF A SEX OFFENSE CONTAINED IN ARTICLE ONE HUNDRED THIRTY OR SECTION 255.25, 263.05, 263.10 OR 263.15 OF THE PENAL LAW may receive time allowances as discretionary reductions of the term of his OR HER sentence not to exceed in the aggregate one-third of the term imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

S 10. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, section or part of this act directly involved in which the judgment shall have been rendered.

S 11. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; and shall apply to persons convicted and sentenced for committing a designated sex offense or convicted as a recidivist sex offender on or after such date provided, however, that the division of parole shall immediately take the necessary actions to contract for the provision of any necessary services to be provided in connection with such program and provided further that such program shall be implemented as soon as possible following the effective date of this act, provided further that the amendments to subdivision 1 of section 803 of the correction law made by section seven of this act shall be subject to the expiration and reversion of such section pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section eight of this act shall take effect.