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

8090

2009-2010 Regular Sessions

I N A S S E M B L Y

May 4, 2009

Introduced by M. of A. EDDINGTON, GUNTHER -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the criminal procedure law, in relation to sex offenders

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

Section 1. Subdivision 1 of section 168-a of the correction law, as added by chapter 192 of the laws of 1995, is amended to read as follows:

1. "Sex offender" includes (A) any person who is convicted of any of the offenses set forth in subdivision two or three of this section; OR (B) ANY PERSON AGAINST WHOM A VERDICT OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT IS ENTERED OR FROM WHOM A PLEA OF NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT IS ACCEPTED WHERE THE OFFENSE OR OFFENSES CHARGED IN THE INDICTMENT OR ACCUSATORY INSTRUMENT INCLUDE 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.

S 2. Subdivision 6 of section 330.20 of the criminal procedure law, as added by chapter 548 of the laws of 1980, is amended to read as follows:

6. Initial hearing; commitment order. After the examination reports are submitted, the court must, within ten days of the receipt of such reports, conduct an initial hearing to determine the defendant's present mental condition. If the defendant is in the custody of the commissioner pursuant to an examination order, the court must direct the sheriff to obtain custody of the defendant from the commissioner and to confine the defendant pending further order of the court, except that the court may direct the sheriff to confine the defendant in an institution located near the place where the court sits if that institution has been designated by the commissioner as suitable for the temporary and secure

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

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detention of mentally disabled persons. At such initial hearing, the district attorney must establish to the satisfaction of the court that the defendant has a dangerous mental disorder or is mentally ill. If the court finds that the defendant has a dangerous mental disorder, it must issue a commitment order, PROVIDED HOWEVER THAT WHERE THE OFFENSE OR OFFENSES CHARGED IN THE INDICTMENT OR ACCUSATORY INSTRUMENT AGAINST THE DEFENDANT INCLUDE ANY OF THE OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW THE ORDER SHALL REQUIRE THE DEFENDANT TO COMPLY WITH THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW UPON DISCHARGE OR CONDITIONAL RELEASE. If the court finds that the defendant does not have a dangerous mental disorder but is mentally ill, the provisions of subdivision seven of this section shall apply.

S 3. Subdivision 7 of section 330.20 of the criminal procedure law, as added by chapter 548 of the laws of 1980, is amended to read as follows:

7. Initial hearing civil commitment and order of conditions. If, at the conclusion of the initial hearing conducted pursuant to subdivision six of this section, the court finds that the defendant is mentally ill but does not have a dangerous mental disorder, the provisions of articles nine or fifteen of the mental hygiene law shall apply at that stage of the proceedings and at all subsequent proceedings. Having found that the defendant is mentally ill, the court must issue an order of conditions and an order committing the defendant to the custody of the commissioner. The latter order shall be deemed an order made pursuant to the mental hygiene law and not pursuant to this section, and further retention, conditional release or discharge of such defendant shall be in accordance with the provisions of the mental hygiene law, PROVIDED HOWEVER THAT WHERE THE OFFENSE OR OFFENSES CHARGED IN THE INDICTMENT OR ACCUSATORY INSTRUMENT AGAINST THE DEFENDANT INCLUDE ANY OF THE OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW THE ORDER SHALL REQUIRE THE DEFENDANT TO COMPLY WITH THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW UPON DISCHARGE OR CONDITIONAL RELEASE. If, at the conclusion of the initial hearing, the court finds that the defendant does not have a dangerous mental disorder and is not mentally ill, the court must discharge the defendant either unconditionally or subject to an order of conditions, PROVIDED HOWEVER THAT WHERE THE OFFENSE OR OFFENSES CHARGED IN THE INDICTMENT OR ACCUSATORY INSTRUMENT AGAINST THE DEFENDANT INCLUDE ANY OF THE OFFENSES SET FORTH IN SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW THE ORDER SHALL REQUIRE THE DEFENDANT TO COMPLY WITH THE PROVISIONS OF ARTICLE SIX-C OF THE CORRECTION LAW UPON UNCONDITIONAL DISCHARGE OR CONDITIONAL RELEASE.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.