

2540

2009-2010 Regular Sessions

I N S E N A T E

February 23, 2009

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to chemical treatment of sex offenders

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

1 Section 1. The penal law is amended by adding a new section 70.11 to
2 read as follows:

3 S 70.11 CHEMICAL TREATMENT OF SEX OFFENDERS.

4 1. (A) A PERSON CONVICTED OF A FIRST VIOLENT FELONY SEX OFFENSE PURSU-
5 ANT TO ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND WHICH OFFENSE IS
6 ALSO DEFINED AS A VIOLENT FELONY PURSUANT TO SECTION 70.02 OF THIS ARTI-
7 CLE MAY BE SENTENCED TO UNDERGO MEDROXYPROGESTERONE ACETATE (MPA) TREAT-
8 MENT OR ITS CHEMICAL EQUIVALENT, ACCORDING TO A SCHEDULE OF ADMINIS-
9 TRATION MONITORED BY THE DEPARTMENT OF CORRECTIONAL SERVICES.

10 (B) A PERSON CONVICTED OF A VIOLENT FELONY SEX OFFENSE SHALL BE
11 SENTENCED TO UNDERGO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS
12 CHEMICAL EQUIVALENT ACCORDING TO A SCHEDULE OF ADMINISTRATION MONITORED
13 BY THE DEPARTMENT OF CORRECTIONAL SERVICES WHEN THE DEFENDANT HAS A
14 PRIOR CONVICTION OF A VIOLENT FELONY SEX OFFENSE.

15 (C) A PERSON CONVICTED OF A FIRST OFFENSE WHO IS NOT SENTENCED TO
16 UNDERGO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL
17 EQUIVALENT, MAY VOLUNTARILY UNDERGO SUCH TREATMENT UPON WRITTEN MOTION
18 BY THE DEFENDANT PROVIDING THE DEFENDANT'S KNOWING AND VOLUNTARY
19 CONSENT. IF THE COURT SENTENCES A DEFENDANT TO BE TREATED WITH MEDROXY-
20 PROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT, THE PENALTY MAY
21 NOT BE ISSUED IN LIEU OF, OR REDUCE, ANY OTHER PENALTY. HOWEVER, IN
22 LIEU OF TREATMENT WITH MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL
23 EQUIVALENT, THE COURT MAY ORDER THE DEFENDANT TO UNDERGO PHYSICAL
24 CASTRATION UPON WRITTEN MOTION BY THE DEFENDANT PROVIDING THE DEFEND-

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

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1 ANT'S KNOWING AND VOLUNTARY CONSENT TO PHYSICAL CASTRATION AS AN ALTER-
2 NATIVE PENALTY.

3 2. (A) AN ORDER OF THE COURT SENTENCING A DEFENDANT TO MEDROXYPROGEST-
4 ERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT, UNDER SUBDIVI-
5 SION ONE OF THIS SECTION SHALL BE CONTINGENT UPON A DETERMINATION BY A
6 COURT APPOINTED MEDICAL EXPERT THAT THE DEFENDANT IS AN APPROPRIATE
7 CANDIDATE FOR TREATMENT, AND TO PROVIDE THAT A DEFENDANT SENTENCED TO
8 PROBATION WHO IS NOT IN CUSTODY SHALL BE RETURNED TO CUSTODY FOR SUCH
9 TREATMENT, TO PROVIDE THAT NO SUCH TREATMENT SHALL BE ADMINISTERED UNTIL
10 SUCH PERSON HAS BEEN FULLY INFORMED OF THE SIDE EFFECTS OF MEDROXYPRO-
11 GESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT AND HAS
12 CONSENTED THERETO IN WRITING. SUCH DETERMINATION IS TO BE MADE NO LATER
13 THAN SIXTY DAYS FROM THE IMPOSITION OF THE SENTENCE. THE ORDER OF THE
14 COURT SENTENCING A DEFENDANT TO MEDROXYPROGESTERONE ACETATE (MPA) TREAT-
15 MENT OR ITS CHEMICAL EQUIVALENT SHALL SPECIFY THE DURATION OF TREATMENT
16 FOR A SPECIFIC TERM OF YEARS, OR UNTIL SUCH PERSON DEMONSTRATES TO THE
17 BOARD OF PAROLE THAT THIS TREATMENT IS NO LONGER NECESSARY.

18 (B) THE PHYSICIAN ADMINISTERING MEDROXYPROGESTERONE ACETATE (MPA) OR
19 ITS CHEMICAL EQUIVALENT SHALL PROVIDE A REPORT AND RECOMMENDATION TO THE
20 BOARD OF PAROLE REGARDING THE APPROPRIATENESS OF CONTINUED MEDROXYPRO-
21 GESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT ON AN ANNU-
22 AL BASIS.

23 (C) IN ALL CASES INVOLVING DEFENDANTS SENTENCED TO A PERIOD OF INCAR-
24 CERATION, THE ADMINISTRATION OF TREATMENT WITH MEDROXYPROGESTERONE
25 ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT SHALL COMMENCE NOT LATER THAN
26 ONE WEEK PRIOR TO THE DEFENDANT'S RELEASE FROM PRISON OR OTHER INSTITU-
27 TION.

28 3. THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL PROVIDE THE SERVICES
29 NECESSARY TO ADMINISTER MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR
30 ITS CHEMICAL EQUIVALENT. A PHYSICAL OR MENTAL HEALTH PROFESSIONAL MAY
31 REFUSE TO ADMINISTER SUCH TREATMENT AND ANY PHYSICAL OR MENTAL HEALTH
32 PROFESSIONAL THAT ACTS IN GOOD FAITH IN COMPLIANCE WITH THE PROVISIONS
33 OF THIS SECTION SHALL BE IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR HIS
34 OR HER ACTIONS IN COMPLIANCE WITH THIS TREATMENT. NOTHING CONTAINED IN
35 THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE CONTINUED ADMINISTRATION
36 OF MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIV-
37 ALENT WHEN IT IS NOT MEDICALLY APPROPRIATE.

38 IF MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT IS
39 REQUIRED, THE COST OF SUCH TREATMENT SHALL BE BORNE BY THE OFFENDER
40 BASED UPON SUCH OFFENDER'S ABILITY TO PAY.

41 4. AS USED IN THIS SECTION THE TERM "PRIOR CONVICTION" MEANS A
42 CONVICTION FOR WHICH SENTENCE WAS IMPOSED SEPARATELY PRIOR TO THE IMPO-
43 SITION OF THE SENTENCE FOR THE CURRENT OFFENSE AND WHICH WAS SENTENCED
44 SEPARATELY FROM ANY OTHER CONVICTION THAT IS TO BE COUNTED AS A PRIOR
45 CONVICTION UNDER THIS SECTION.

46 5. IF A DEFENDANT WHOM THE COURT HAS SENTENCED TO MEDROXYPROGESTERONE
47 ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT, FAILS OR REFUSES TO:

48 (A) APPEAR AS REQUIRED BY THE DEPARTMENT OF CORRECTIONAL SERVICES FOR
49 THE PURPOSE OF ADMINISTERING THE MEDROXYPROGESTERONE ACETATE (MPA) OR
50 ITS CHEMICAL EQUIVALENT; OR

51 (B) ALLOW THE ADMINISTRATION OF MEDROXYPROGESTERONE ACETATE (MPA) OR
52 ITS CHEMICAL EQUIVALENT;

53 THE DEFENDANT SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

54 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
55 sion, section or part of this act shall be adjudged by any court of
56 competent jurisdiction to be invalid, such judgement shall not affect,

1 impair, or invalidate the remainder thereof, but shall be confined in
2 its operation to the clause, sentence, paragraph, subdivision, section
3 or part thereof directly involved in the controversy in which such
4 judgement shall have been rendered. It is hereby declared to be the
5 intent of the legislature that this act would have been enacted even if
6 such invalid provisions had not been included herein.

7 S 3. This act shall take effect on the first of November next succeed-
8 ing the date on which it shall have become a law.