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

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I N  S E N A T E

April 15, 2010

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to defining "repeat sex offender" and establishing procedures for the evaluation and supervision of repeat sex offenders requiring continuing civil management

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

Section 1. Section 10.03 of the mental hygiene law is amended by adding a new subdivision (m-1) to read as follows:

(M-1) "REPEAT SEX OFFENDER" MEANS ANY DETAINED SEX OFFENDER, AS DEFINED IN SUBDIVISION (G) OF THIS SECTION, WHO:

(1) STANDS CONVICTED TWO OR MORE TIMES OF A SEX OFFENSE AS DEFINED IN SUBDIVISION (P) OF THIS SECTION OR STANDS CONVICTED TWO OR MORE TIMES OF A DESIGNATED FELONY THAT WAS SEXUALLY MOTIVATED AND COMMITTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION;

(2) HAS BEEN CHARGED WITH TWO OR MORE SEX OFFENSES AND HAS BEEN DETERMINED TO BE INCAPACITATED AND HAS BEEN COMMITTED PURSUANT TO ARTICLE SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW, BUT DID ENGAGE IN THE CONDUCT CONSTITUTING SUCH OFFENSE, OR WHO HAS BEEN FOUND NOT RESPONSIBLE BY REASON OF MENTAL DISEASE OR DEFECT FOR THE COMMISSION OF THAT OFFENSE;

(3) A PERSON CONVICTED TWO OR MORE TIMES OF A SEX OFFENSE WHO IS, OR WAS AT ANY TIME AFTER SEPTEMBER FIRST, TWO THOUSAND FIVE, A PATIENT IN A HOSPITAL OPERATED BY THE OFFICE OF MENTAL HEALTH, AND WHO WAS ADMITTED DIRECTLY TO SUCH FACILITY PURSUANT TO ARTICLE NINE OF THIS TITLE OR SECTION FOUR HUNDRED TWO OF THE CORRECTION LAW UPON RELEASE OR CONDITIONAL RELEASE FROM A CORRECTIONAL FACILITY.

S 2. Subdivisions (a), (d) and (g) of section 10.05 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(a) The commissioner of mental health, in [consultation] CONJUNCTION with the commissioner of the department of correctional services and the

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

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commissioner of mental retardation and developmental disabilities, shall establish a case review panel consisting of at least fifteen members, any three of whom may sit as a team to review a particular case. THE STAFFING AND ADMINISTRATION OF THE CASE REVIEW PANEL SHALL BE CONDUCTED BY THE DEPARTMENT OF CRIMINAL JUSTICE SERVICES. At least two members of each team shall be [professionals] PSYCHIATRIC EXAMINERS WITH EXPERTISE in the field of mental health or the field of mental retardation and developmental disabilities, as appropriate, with experience in the treatment, diagnosis, risk assessment or management of sex offenders. To the extent practicable, the workload of the case review panel should be evenly distributed among its members. Members of the case review panel and psychiatric examiners should be free to exercise independent professional judgment without pressure or retaliation for the exercise of that judgment from any source.

(d) (1) The commissioner shall be authorized to designate multidisciplinary staff, including clinical and other professional personnel, to provide a preliminary review of the need for detained sex offenders to be evaluated under the procedures of this section. When the commissioner receives notice pursuant to subdivision (b) of this section, such staff shall review and assess relevant medical, clinical, criminal, or institutional records, actuarial risk assessment instruments or other records and reports, including records and reports provided by the district attorney of the county where the person was convicted, or in the case of persons determined to be incapacitated or not responsible by reason of mental disease or defect, the county where the person was charged. Upon such review and assessment, the staff shall determine whether the person who is the subject of the notice should be referred to a case review team for evaluation.

(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVISION, ANY DETAINED SEX OFFENDER WHO IS A REPEAT SEX OFFENDER SHALL BE IMMEDIATELY REFERRED BY THE MULTIDISCIPLINARY STAFF TO A CASE REVIEW TEAM FOR EVALUATION WITHOUT UNDERGOING THE MULTIDISCIPLINARY STAFF REVIEW AND ASSESSMENT DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

(g) If the case review team finds that the respondent is a sex offender requiring civil management, it shall so notify the respondent and the attorney general, in writing. IN ORDER TO REFER A CASE FOR CIVIL MANAGEMENT, AT LEAST TWO OF THE THREE CASE REVIEW TEAM MEMBERS SHALL FIND THAT THE RESPONDENT IS A SEX OFFENDER REQUIRING CIVIL MANAGEMENT. The written notice must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a mental abnormality. Where the notice indicates that a respondent stands convicted of or was charged with a designated felony, it shall also include the case review team's finding as to whether the act was sexually motivated. The case review team shall provide its written notice to the attorney general and the respondent within forty-five days of the commissioner receiving the notice of anticipated release. However, failure to do so within that time period shall not affect the validity of such notice or finding or any subsequent action, including the attorney general's filing of a sex offender civil management petition subsequent to receiving the finding of the case review team.

S 3. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.