

7501

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:

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

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

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

9 (2) HAS BEEN CHARGED WITH TWO OR MORE SEX OFFENSES AND HAS BEEN DETER-
10 MINED TO BE INCAPACITATED AND HAS BEEN COMMITTED PURSUANT TO ARTICLE
11 SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW, BUT DID ENGAGE IN
12 THE CONDUCT CONSTITUTING SUCH OFFENSE, OR WHO HAS BEEN FOUND NOT RESPON-
13 SIBLE BY REASON OF MENTAL DISEASE OR DEFECT FOR THE COMMISSION OF THAT
14 OFFENSE;

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

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

24 (a) The commissioner of mental health, in [consultation] CONJUNCTION
25 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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1 commissioner of mental retardation and developmental disabilities, shall
2 establish a case review panel consisting of at least fifteen members,
3 any three of whom may sit as a team to review a particular case. THE
4 STAFFING AND ADMINISTRATION OF THE CASE REVIEW PANEL SHALL BE CONDUCTED
5 BY THE DEPARTMENT OF CRIMINAL JUSTICE SERVICES. At least two members of
6 each team shall be [professionals] PSYCHIATRIC EXAMINERS WITH EXPERTISE
7 in the field of mental health or the field of mental retardation and
8 developmental disabilities, as appropriate, with experience in the
9 treatment, diagnosis, risk assessment or management of sex offenders. To
10 the extent practicable, the workload of the case review panel should be
11 evenly distributed among its members. Members of the case review panel
12 and psychiatric examiners should be free to exercise independent profes-
13 sional judgment without pressure or retaliation for the exercise of that
14 judgment from any source.

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

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

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

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