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I N A S S E M B L Y

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Introduced by M. of A. TEDISCO, ALFANO, AMEDORE, BURLING, CALHOUN, FINCH  
-- Multi-Sponsored by -- M. of A. BACALLES, BARRA, BUTLER, CONTE,  
CROUCH, DUPREY, GIGLIO, JORDAN, McDONOUGH, McKEVITT, J. MILLER, MOLI-  
NARO, OAKS, RAIA, REILICH, SALADINO, SCOZZAFAVA, THIELE, TOWNSEND --  
read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to allowing the  
detention of a respondent of a "sex offender requiring civil manage-  
ment petition" pending trial, and to establish the standard of proof  
at trial be "beyond a reasonable doubt" rather than "by clear and  
convincing evidence"

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

1 Section 1. Subdivision (k) of section 10.06 of the mental hygiene law,  
2 as amended by section 1 of part H of chapter 58 of the laws of 2009, is  
3 amended to read as follows:  
4 (k) At the conclusion of the hearing, the court shall determine wheth-  
5 er there is probable cause to believe that the respondent is a sex  
6 offender requiring civil management. If the court determines that proba-  
7 ble cause has not been established, the court shall issue an order  
8 dismissing the petition, and the respondent's release shall be in  
9 accordance with other applicable provisions of law. If the court deter-  
10 mines that probable cause has been established[: (i) the court shall  
11 order that the respondent be committed to a secure treatment facility  
12 designated by the commissioner for care, treatment and control upon his  
13 or her release, provided, however, that a respondent who otherwise would  
14 be required to be transferred to a secure treatment facility may, upon a  
15 written consent signed by the respondent and his or her counsel, consent  
16 to remain in the custody of the department of correctional services  
17 pending the outcome of the proceedings under this article, and that such  
18 consent may be revoked in writing at any time; (ii)] the court shall set  
19 a date for trial in accordance with subdivision (a) of section 10.07 of  
20 this article. IF RESPONDENT IS EITHER AT LIBERTY AT THE TIME OF THE  
21 HEARING OR ELIGIBLE FOR RELEASE FROM IMPRISONMENT DURING THE PERIOD OF  
22 TIME BETWEEN THE HEARING AND THE TRIAL DATE, THE COURT SHALL FURTHER

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

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1 DETERMINE WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT THE RESPONDENT  
2 IS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT. IF THE COURT DETER-  
3 MINES THAT PROBABLE CAUSE HAS NOT BEEN ESTABLISHED, THE COURT SHALL  
4 ORDER THE RESPONDENT'S RELEASE AND SHALL BE IN ACCORDANCE WITH OTHER  
5 APPLICABLE PROVISIONS OF LAW, AND THE COURT SHALL ORDER THE RESPONDENT  
6 APPEAR FOR TRIAL. IF THE COURT DETERMINES THAT PROBABLE CAUSE HAS BEEN  
7 ESTABLISHED THE COURT SHALL ORDER THAT THE RESPONDENT BE COMMITTED TO A  
8 SECURE TREATMENT FACILITY DESIGNATED BY THE COMMISSIONER FOR CARE,  
9 TREATMENT AND CONTROL UPON HIS OR HER RELEASE; and [(iii)] the respond-  
10 ent shall not be released pending the completion of such trial.

11 S 2. Subdivision (d) of section 10.07 of the mental hygiene law, as  
12 added by chapter 7 of the laws of 2007, is amended to read as follows:

13 (d) The jury, or the court if a jury trial is waived, shall determine  
14 [by clear and convincing evidence] BEYOND A REASONABLE DOUBT whether the  
15 respondent is a detained sex offender who suffers from a mental abnor-  
16 mality. The burden of proof shall be on the attorney general. A determi-  
17 nation, if made by the jury, must be by unanimous verdict. In charging  
18 the jury, the court's instructions shall include the admonishment that  
19 the jury may not find solely on the basis of the respondent's commission  
20 of a sex offense that the respondent is a detained sex offender who  
21 suffers from a mental abnormality. In the case of a respondent committed  
22 pursuant to article seven hundred thirty of the criminal procedure law  
23 for a sex offense, the attorney general shall have the burden of proving  
24 [by clear and convincing evidence] BEYOND A REASONABLE DOUBT that the  
25 respondent did engage in the conduct constituting such offense.

26 S 3. This act shall take effect immediately.