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

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:

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

S 70.11 CHEMICAL TREATMENT OF SEX OFFENDERS.

1. (A) A PERSON CONVICTED OF A FIRST VIOLENT FELONY SEX OFFENSE PURSUANT TO ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER AND WHICH OFFENSE IS ALSO DEFINED AS A VIOLENT FELONY PURSUANT TO SECTION 70.02 OF THIS ARTICLE MAY BE SENTENCED TO UNDERGO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT, ACCORDING TO A SCHEDULE OF ADMINISTRATION MONITORED BY THE DEPARTMENT OF CORRECTIONAL SERVICES.

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

(C) A PERSON CONVICTED OF A FIRST OFFENSE WHO IS NOT SENTENCED TO UNDERGO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT, MAY VOLUNTARILY UNDERGO SUCH TREATMENT UPON WRITTEN MOTION BY THE DEFENDANT PROVIDING THE DEFENDANT'S KNOWING AND VOLUNTARY CONSENT. IF THE COURT SENTENCES A DEFENDANT TO BE TREATED WITH MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT, THE PENALTY MAY NOT BE ISSUED IN LIEU OF, OR REDUCE, ANY OTHER PENALTY. HOWEVER, IN LIEU OF TREATMENT WITH MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT, THE COURT MAY ORDER THE DEFENDANT TO UNDERGO PHYSICAL 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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ANT'S KNOWING AND VOLUNTARY CONSENT TO PHYSICAL CASTRATION AS AN ALTERNATIVE PENALTY.

2. (A) AN ORDER OF THE COURT SENTENCING A DEFENDANT TO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT, UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE CONTINGENT UPON A DETERMINATION BY A COURT APPOINTED MEDICAL EXPERT THAT THE DEFENDANT IS AN APPROPRIATE CANDIDATE FOR TREATMENT, AND TO PROVIDE THAT A DEFENDANT SENTENCED TO PROBATION WHO IS NOT IN CUSTODY SHALL BE RETURNED TO CUSTODY FOR SUCH TREATMENT, TO PROVIDE THAT NO SUCH TREATMENT SHALL BE ADMINISTERED UNTIL SUCH PERSON HAS BEEN FULLY INFORMED OF THE SIDE EFFECTS OF MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT AND HAS CONSENTED THERETO IN WRITING. SUCH DETERMINATION IS TO BE MADE NO LATER THAN SIXTY DAYS FROM THE IMPOSITION OF THE SENTENCE. THE ORDER OF THE COURT SENTENCING A DEFENDANT TO MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT SHALL SPECIFY THE DURATION OF TREATMENT FOR A SPECIFIC TERM OF YEARS, OR UNTIL SUCH PERSON DEMONSTRATES TO THE BOARD OF PAROLE THAT THIS TREATMENT IS NO LONGER NECESSARY.

(B) THE PHYSICIAN ADMINISTERING MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT SHALL PROVIDE A REPORT AND RECOMMENDATION TO THE BOARD OF PAROLE REGARDING THE APPROPRIATENESS OF CONTINUED MEDROXYPROGESTERONE ACETATE (MPA) TREATMENT OR ITS CHEMICAL EQUIVALENT ON AN ANNUAL BASIS.

(C) IN ALL CASES INVOLVING DEFENDANTS SENTENCED TO A PERIOD OF INCARCERATION, THE ADMINISTRATION OF TREATMENT WITH MEDROXYPROGESTERONE ACETATE (MPA) OR ITS CHEMICAL EQUIVALENT SHALL COMMENCE NOT LATER THAN ONE WEEK PRIOR TO THE DEFENDANT'S RELEASE FROM PRISON OR OTHER INSTITUTION.

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

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

4. AS USED IN THIS SECTION THE TERM "PRIOR CONVICTION" MEANS A CONVICTION FOR WHICH SENTENCE WAS IMPOSED SEPARATELY PRIOR TO THE IMPOSITION OF THE SENTENCE FOR THE CURRENT OFFENSE AND WHICH WAS SENTENCED SEPARATELY FROM ANY OTHER CONVICTION THAT IS TO BE COUNTED AS A PRIOR CONVICTION UNDER THIS SECTION.

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

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

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

THE DEFENDANT SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

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

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

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.