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

2038

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. TEDISCO, AMEDORE, BURLING, CALHOUN, FINCH -- Multi-Sponsored by -- M. of A. BUTLER, CONTE, CROUCH, DUPREY, GIGLIO, JORDAN, McDONOUGH, McKEVITT, J. MILLER, MOLINARO, OAKS, RAIA, REILICH, SALADINO, THIELE -- 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 management 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (k) of section 10.06 of the mental hygiene law, as amended by section 1 of part H of chapter 58 of the laws of 2009, is amended to read as follows:

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established[: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility may, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of correctional services pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii)] the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of

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

LBD01969-01-1

this article. IF RESPONDENT IS EITHER AT LIBERTY AT THE TIME OF THE HEARING OR ELIGIBLE FOR RELEASE FROM IMPRISONMENT DURING THE PERIOD OF TIME BETWEEN THE HEARING AND THE TRIAL DATE, THE COURT SHALL FURTHER DETERMINE WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT THE RESPONDENT IS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT. IF THE COURT DETERMINES THAT PROBABLE CAUSE HAS NOT BEEN ESTABLISHED, THE COURT SHALL ORDER THE RESPONDENT'S RELEASE AND SHALL BE IN ACCORDANCE WITH OTHER APPLICABLE PROVISIONS OF LAW, AND THE COURT SHALL ORDER THE RESPONDENT APPEAR FOR TRIAL. IF THE COURT DETERMINES THAT PROBABLE CAUSE HAS BEEN ESTABLISHED THE COURT SHALL ORDER THAT THE RESPONDENT BE COMMITTED TO A SECURE TREATMENT FACILITY DESIGNATED BY THE COMMISSIONER FOR CARE, TREATMENT AND CONTROL UPON HIS OR HER RELEASE; and [(iii)] the respondent shall not be released pending the completion of such trial.

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

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

S 3. This act shall take effect immediately.