

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 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

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

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

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

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

29 S 3. This act shall take effect immediately.