

7678

2011-2012 Regular Sessions

I N A S S E M B L Y

May 12, 2011

Introduced by M. of A. SALADINO, MONTESANO, RAIA, RA, N. RIVERA --
Multi-Sponsored by -- M. of A. BURLING, GRAF, McDONOUGH -- read once
and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to eliminating the
alternative of strict and intensive supervision and treatment for sex
offenders requiring civil management; and to repeal section 10.11 of
the mental hygiene law and subdivision 9-a of section 259-a of the
executive law relating thereto

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

1 Section 1. Subdivision (c) of section 10.01 of the mental hygiene law,
2 as added by chapter 7 of the laws of 2007, is amended to read as
3 follows:
4 (c) That [for other sex offenders, it can be effective and appropriate
5 to provide treatment in a regimen of strict and intensive outpatient
6 supervision. Accordingly, civil commitment should be only one element in
7 a range of responses to the need for treatment of sex offenders. The]
8 THE goal of a comprehensive system should be to protect the public,
9 reduce recidivism, and ensure offenders have access to proper treatment.
10 S 2. Subdivisions (q), (r) and (s) of section 10.03 of the mental
11 hygiene law, as added by chapter 7 of the laws of 2007, are amended to
12 read as follows:
13 (q) "Sex offender requiring civil management" means a detained sex
14 offender who suffers from a mental abnormality. A sex offender requiring
15 civil management can, as determined by procedures set forth in this
16 article, be [either (1)] a dangerous sex offender requiring confinement
17 [or (2) a sex offender requiring strict and intensive supervision].
18 (r) ["Sex offender requiring strict and intensive supervision" means a
19 detained sex offender who suffers from a mental abnormality but is not a
20 dangerous sex offender requiring confinement.

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

LBD09029-01-1

1 (s)] "Sexually motivated" means that the act or acts constituting a
2 designated felony were committed in whole or in substantial part for the
3 purpose of direct sexual gratification of the actor.

4 S 3. Subdivision (f) of section 10.07 of the mental hygiene law, as
5 added by chapter 7 of the laws of 2007, is amended to read as follows:

6 (f) If the jury, or the court if a jury trial is waived, determines
7 that the respondent is a detained sex offender who suffers from a mental
8 abnormality, then the court shall consider whether the respondent is a
9 dangerous sex offender requiring confinement [or a sex offender requir-
10 ing strict and intensive supervision]. The parties may offer additional
11 evidence, and the court shall hear argument, as to that issue. If the
12 court finds by clear and convincing evidence that the respondent has a
13 mental abnormality involving such a strong predisposition to commit sex
14 offenses, and such an inability to control behavior, that the respondent
15 is likely to be a danger to others and to commit sex offenses if not
16 confined to a secure treatment facility, then the court shall find the
17 respondent to be a dangerous sex offender requiring confinement. In such
18 case, the respondent shall be committed to a secure treatment facility
19 for care, treatment, and control until such time as he or she no longer
20 requires confinement. [If the court does not find that the respondent is
21 a dangerous sex offender requiring confinement, then the court shall
22 make a finding of disposition that the respondent is a sex offender
23 requiring strict and intensive supervision, and the respondent shall be
24 subject to a regimen of strict and intensive supervision and treatment
25 in accordance with section 10.11 of this article.] In making a finding
26 [of disposition], the court shall consider [the conditions that would be
27 imposed upon the respondent if subject to a regimen of strict and inten-
28 sive supervision, and] all available information about the prospects for
29 the respondent's possible re-entry into the community.

30 S 4. Subdivision (g) of section 10.08 of the mental hygiene law, as
31 added by chapter 7 of the laws of 2007, is amended to read as follows:

32 (g) In preparing for or conducting any hearing or trial pursuant to
33 the provisions of this article, and in preparing any petition under the
34 provisions of this article, the respondent shall have the right to have
35 counsel represent him or her, provided that the respondent shall not be
36 entitled to appointment of counsel prior to the time provided in section
37 10.06 of this article. The attorney general shall represent the state.
38 Any relevant written reports of psychiatric examiners shall be admissi-
39 ble, regardless of whether the author of the report is called to testi-
40 fy, so long as they are certified pursuant to subdivision (c) of rule
41 forty-five hundred eighteen of the civil practice law and rules, in any
42 proceeding or hearing held pursuant to subdivision (g) or (h) of section
43 10.06 of this article[, paragraph two of subdivision (a), or paragraph
44 four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11
45 of this article]. In all other proceedings or hearings held pursuant to
46 this article, such admissibility shall require a showing of the author's
47 unavailability to testify, or other good cause. All plea minutes and
48 prior trial testimony from the underlying criminal proceeding, and
49 records from previous proceedings under this article, shall be admissi-
50 ble. Each witness, whether called by the attorney general or the
51 respondent, must, unless he or she would be authorized to give unsworn
52 evidence at a trial, testify under oath, and may be cross-examined. The
53 respondent may, as a matter of right, testify in his or her own behalf,
54 call and examine other witnesses, and produce other evidence in his or
55 her behalf. The respondent may not, however, cause a subpoena to be
56 served on the person against whom the sex offense was committed or

1 alleged to have been committed by the respondent, except upon order of
2 the court for good cause shown. Either party may request closure of the
3 courtroom, or sealing of papers, for good cause shown.

4 S 5. Subdivisions (e), (f) and (h) of section 10.09 of the mental
5 hygiene law, as added by chapter 7 of the laws of 2007, are amended to
6 read as follows:

7 (e) If, at any time, the commissioner determines that the respondent
8 no longer is a dangerous sex offender requiring confinement, the commis-
9 sioner shall petition the court for discharge of the respondent [or for
10 the imposition of a regimen of strict and intensive supervision and
11 treatment]. The petition shall be served upon the attorney general and
12 the respondent, and filed in the supreme or county court where the
13 person is located. The court, upon review of the petition, shall either
14 order the requested relief or order that an evidentiary hearing be held.

15 (f) The respondent may at any time petition the court for discharge
16 [and/or release to the community under a regimen of strict and intensive
17 supervision and treatment]. Upon review of the respondent's petition,
18 other than in connection with annual reviews as described in subdivi-
19 sions (a), (b) and (d) of this section, the court may order that an
20 evidentiary hearing be held, or may deny an evidentiary hearing and deny
21 the petition upon a finding that the petition is frivolous or does not
22 provide sufficient basis for reexamination prior to the next annual
23 review. If the court orders an evidentiary hearing under this subdivi-
24 sion, the attorney general shall have the burden of proof as to whether
25 the respondent is currently a dangerous sex offender requiring confine-
26 ment.

27 (h) At the conclusion of an evidentiary hearing, if the court finds by
28 clear and convincing evidence that the respondent is currently a danger-
29 ous sex offender requiring confinement, the court shall continue the
30 respondent's confinement. [Otherwise the court, unless it finds that the
31 respondent no longer suffers from a mental abnormality, shall issue an
32 order providing for the discharge of the respondent to a regimen of
33 strict and intensive supervision and treatment pursuant to section 10.11
34 of this article.]

35 S 6. Section 10.11 of the mental hygiene law is REPEALED.

36 S 7. Subdivision 9-a of section 259-a of the executive law is
37 REPEALED.

38 S 8. This act shall take effect on the thirtieth day after it shall
39 have become a law.