STATE OF NEW YORK

4997

2019-2020 Regular Sessions

IN ASSEMBLY

February 6, 2019

Introduced by M. of A. RAIA, BARCLAY, CROUCH, GIGLIO, McDONOUGH, MORINELLO, WILLIAMS, NORRIS, D'URSO, MONTESANO, LAWRENCE, PALUMBO -- Multi-Sponsored by -- M. of A. PALMESANO -- 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 relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (c) of section 10.01 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(c) That [~~for other sex offenders, it can be effective and appropriate to provide treatment in a regimen of strict and intensive outpatient supervision. Accordingly, civil commitment should be only one element in a range of responses to the need for treatment of sex offenders. The~~] **the** goal of a comprehensive system should be to protect the public, reduce recidivism, and ensure offenders have access to proper treatment.

§ 2. Subdivisions (q), (r) and (s) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, are amended to read as follows:

(q) "Sex offender requiring civil management" means a detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be [~~either (1)~~] a dangerous sex offender requiring confinement [~~or (2) a sex offender requiring strict and intensive supervision~~].

(r) [~~"Sex offender requiring strict and intensive supervision" means a detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement.~~

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

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

§ 3. Subdivision (f) 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:

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

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

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

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

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

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

(f) The respondent may at any time petition the court for discharge [~~and/or release to the community under a regimen of strict and intensive supervision and treatment~~]. Upon review of the respondent's petition, other than in connection with annual reviews as described in subdivisions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next annual review. If the court orders an evidentiary hearing under this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

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

§ 6. Section 10.11 of the mental hygiene law is REPEALED.

§ 7. This act shall take effect on the thirtieth day after it shall have become a law.