

ASSEMBLY, No. 1615
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SYNOPSIS

Expands civil commitment law regarding sexually violent offenders.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/10/1998)

An Act concerning the civil commitment of sex offenders and amending P.L.1994, c.134 and P.L.1987, c.116.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1994, c.134 is amended to read as follows:

1. a. A small but dangerous group of sexual offenders and other violent offenders suffer from a mental illness or mental abnormality which renders them dangerous to others and for the protection of the public they are in need of involuntary civil commitment for treatment.

b. The statutory standards for involuntary civil commitment define "mental illness" in terms of its impact on impairment of judgment, behavior and capacity to recognize reality. The statutory standard provides for involuntary commitment when such mental illness causes the person to be dangerous to self or dangerous to others or property. Recommendations concerning commitment too often are based on the presence or absence of psychosis.

c. In contrast to persons appropriate for civil commitment under Title 30 of the Revised Statutes sexually violent offenders generally have antisocial personality features which are unamenable to existing mental illness treatments and those features render them likely to engage in sexually violent behavior. The Legislature further finds that the likelihood that sexually violent offenders will engage in repeat acts of sexual violence is high.

d. The existing involuntary commitment procedures are inadequate to address the risk posed to society by these sexually violent offenders. The Legislature further finds that the prognosis for rehabilitating sexually violent offenders in a prison setting is poor, the treatment needs of this population are very long term and the treatment needs are very different than the treatments needs of people who are appropriate for civil commitment under Title 30.

e. To ensure the public is not denied the protection that the Legislature intended to provide in enacting a law that calls for the involuntary civil commitment of the dangerous mentally ill and the dangerous sexually violent offender, it is necessary to reaffirm and clarify the statutory standards for civil commitment and to revise the procedures governing release of these sexually violent offenders and the procedures governing civil commitment in order to ensure that the full benefits of the civil commitment law are realized.

(cf: P.L.1994, c.134)

2. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to read as follows:

2. As used in this act:

a. "Chief executive officer" means the person who is the chief administrative officer of an institution or psychiatric facility.

b. "Clinical certificate" means a form prepared by the division and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined the person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is in need of involuntary commitment. The form shall also state the specific facts upon which the examining physician has based his conclusion and shall be certified in accordance with the Rules of the

Court. A clinical certificate may not be executed by a person who is a relative by blood or marriage to the person who is being screened. c. "Clinical director" means the person who is designated by the director or chief executive officer to organize and supervise the clinical services provided in a screening service, short-term care or psychiatric facility. The clinical director shall be a psychiatrist, however, those persons currently serving in the capacity will not be affected by this provision. This provision shall not alter any current civil service laws designating the qualifications of such position.

d. "Commissioner" means the Commissioner of the Department of Human Services.

e. "County counsel" means the chief legal officer or advisor of the governing body of a county.

f. "Court" means the Superior Court or a municipal court.

g. "Custody" means the right and responsibility to ensure the provision of care and supervision.

h. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.

i. "Dangerous to others or property" means that by reason of mental illness or mental abnormality there is a substantial likelihood that the person will inflict serious bodily harm upon another person or commit a sex offense or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

j. "Department" means the Department of Human Services.

k. "Director" means the chief administrative officer of a screening service, a short-term care facility or a special psychiatric hospital.

l. "Division" means the Division of Mental Health Services in the Department of Human Services.

m. "In need of involuntary commitment" means that an adult who is mentally ill or who suffers from a mental abnormality, whose mental illness or mental abnormality causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.

n. "Institution" means any State or county facility providing inpatient care, supervision and treatment for the mentally retarded; except that with respect to the maintenance provisions of Title 30 of the Revised Statutes, institution also means any psychiatric facility for the treatment of the mentally ill.

- o. "Mental health agency or facility" means a legal entity which receives funds from the State, county or federal government to provide mental health services.
- p. "Mental health screener" means a psychiatrist, psychologist, social worker, registered professional nurse or other individual trained to do outreach only for the purposes of psychological assessment who is employed by a screening service and possesses the license, academic training or experience, as required by the commissioner pursuant to regulation; except that a psychiatrist and a State licensed clinical psychologist who meet the requirements for mental health screener shall not have to comply with any additional requirements adopted by the commissioner.
- q. "Mental hospital" means, for the purposes of the payment and maintenance provisions of Title 30 of the Revised Statutes, a psychiatric facility.
- r. "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.
- s. "Patient" means a person over the age of 18 who has been admitted to, but not discharged from a short-term care or psychiatric facility.
- t. "Physician" means a person who is licensed to practice medicine in any one of the United States or its territories, or the District of Columbia.
- u. "Psychiatric facility" means a State psychiatric hospital listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.
- v. "Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.
- w. "Psychiatric unit of a general hospital" means an inpatient unit of a general hospital that restricts its services to the care and treatment of the mentally ill who are admitted on a voluntary basis.
- x. "Psychologist" means a person who is licensed as a psychologist by the New Jersey Board of Psychological Examiners.
- y. "Screening certificate" means a clinical certificate executed by a psychiatrist or other physician affiliated with a screening service.
- z. "Screening service" means a public or private ambulatory care service designated by the commissioner, which provides mental health services including assessment, emergency and referral services to mentally ill persons in a specified geographic area.
- aa. "Screening outreach visit" means an evaluation provided by a mental health screener wherever the person may be when clinically relevant information indicates the person may need

involuntary commitment and is unable or unwilling to come to a screening service. bb. "Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the commissioner and is authorized by the commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services.

cc. "Special psychiatric hospital" means a public or private hospital licensed by the Department of Health to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons who are mentally ill.

dd. "Treatment team" means one or more persons, including at least one psychiatrist or physician, and may include a psychologist, social worker, nurse and other appropriate services providers. A treatment team provides mental health services to a patient of a screening service, short-term care or psychiatric facility.

ee. "Voluntary admission" means that adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or available to meet the person's mental health needs. A person may also be voluntarily admitted to a psychiatric facility if his mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available and the psychiatric facility can admit the person and remain within its rated capacity.

ff. "County adjuster" means the person appointed pursuant to R.S.30:4-34.

gg. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others.

hh. "Sexually violent offender" means any person who has been convicted of, charged with, adjudicated delinquent, acquitted by reason of insanity or found incompetent to stand trial pursuant to N.J.S. 2C:4-6 for the commission of a sex offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexually violent acts, if not confined to a secure facility.

ii. "Sex offense" shall include the following:

(1) Aggravated sexual assault or sexual assault pursuant to N.J.S.2C:14-2; aggravated criminal sexual contact or criminal sexual contact pursuant to N.J.S.2C:14-3; kidnapping pursuant to N.J.S.2C:13-1; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to subsection b. of N.J.S.2C:24-4; criminal restraint pursuant to

N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3; or

(2) Any offense under the laws of the United States, this State or any other state which is substantially equivalent to an offense listed in paragraph (1) of this subsection.

(cf: P.L.1995, c.4, s.2)

3. Section 4 of P.L.1994, c.134 (30:4-82.4) is amended to read as follows:

4. a. In order to ensure that adult and juvenile inmates who are dangerous to themselves or others because of a mental illness or mental abnormality and who are "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2), are not released without appropriate supervision and treatment, the board, the Commissioner of the Department of Corrections, the Attorney General, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) and county prosecutors shall follow the procedures set forth in this section.

b. When an adult or juvenile inmate is scheduled for release due to expiration of the inmate's maximum term, the commissioner or the Juvenile Justice Commission shall notify the Attorney General and the prosecutor of the county from which the person was committed if:

(1) The adult inmate's term includes a sentence imposed for conviction of aggravated sexual assault, sexual assault or aggravated criminal sexual contact and the court imposing sentence found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior; or

(2) The parole board or the superintendent of the facility in which the inmate has been confined has advised the commissioner or the Juvenile Justice Commission that the conduct of the inmate during the period of confinement, the inmate's mental condition or the inmate's past history indicates that the inmate may be "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2).

c. Notice required by subsection b. shall be given no less than 90 days before the date on which the inmate's maximum term is scheduled to expire.

d. When such notice is given, the board, the Juvenile Justice Commission or the commissioner shall provide the Attorney General and county prosecutor with all information relevant to a determination of whether the inmate may be "in need of involuntary commitment," including, without regard to classification as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and, if applicable, a statement of the reasons for the determination that the inmate may be "in need of involuntary commitment."

e. If the Attorney General or county prosecutor determines, on the basis of the information provided pursuant to this section or N.J.S.2C:47-5, that the inmate may be "in need of involuntary commitment," the Commissioner of Corrections or the Juvenile Justice Commission,

upon request of the Attorney General or county prosecutor shall:

(1) Permit persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate in the institution in which he is confined; or

(2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2), arrange for persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate.

f. In the interests of the public safety and the well-being of the inmate, the Attorney General or county prosecutor may exercise discretion to obtain an assessment of the inmate's condition by one or more of the means set forth in subsection e. of this section.

g. The Attorney General or county prosecutor shall provide a psychiatrist or physician assessing or examining an inmate pursuant to this section with all information relevant to the inmate's need of involuntary commitment, including information concerning the inmate's condition, history, recent behavior and any recent act or threat. Any person who assesses or examines an inmate pursuant to this section shall provide the Attorney General and county prosecutor with a written report detailing the person's findings and conclusions.

h. (1) All information, documents and records concerning the inmate's mental condition or classified as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission that are received or provided pursuant to this section or N.J.S.2C:47-5 shall be deemed confidential.

(2) Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the inmate's commitment or release, disclosure of such information, documents and records shall be limited to professionals evaluating the inmate's condition pursuant to this section, the Attorney General, county prosecutor and members of their respective staffs as necessary to the performance of duties imposed pursuant to this section.

i. Any person acting in good faith who has provided information relevant to an inmate's need of involuntary commitment or has taken good faith steps to assess an inmate's need of involuntary commitment is immune from civil and criminal liability.

(cf: P.L.1995, c.280, s.33)

4. This act shall take effect .

STATEMENT

This bill would enact a civil commitment statute for sexually violent offenders modeled on the "Sexually Violent Predator Act" in effect in the State of Kansas. The Kansas statute was recently upheld by the United States Supreme Court in Kansas v. Hendricks, ____ U.S. ____, 117 S.Ct. 2072 (1997).

The bill would amend current law concerning the civil commitment of sex offenders by expanding the category of individuals who are deemed to be "in need of involuntary commitment." Currently, sex offenders can be involuntarily committed to a psychiatric facility if they are "mentally ill," and if their mental illness causes them to be dangerous. Under the bill, involuntary commitment would apply not only to those offenders, but also to sexually violent offenders whose mental abnormalities or personality disorders make it likely that they will prey on future victims.

In order to achieve this objective, the bill would amend the civil commitment law, N.J.S.A. 30:4-27.2, to add the new term "mental abnormality," and would clarify that persons with this condition are also in need of involuntary commitment. The bill defines "mental abnormality" as a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit a sex offense in a degree constituting such person as a menace to the health and safety of others.

The bill defines "sexually violent offender" as any person who has been convicted of, charged with, adjudicated delinquent, acquitted by reason of insanity or found incompetent to stand trial pursuant to N.J.S. 2C:4-6 for the commission of a sex offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexually violent acts, if not confined to a secure facility.

The sex offenses included under the bill's purview include the following:

- (1) Aggravated sexual assault or sexual assault pursuant to N.J.S.2C:14-2; aggravated criminal sexual contact or criminal sexual contact pursuant to N.J.S.2C:14-3; kidnapping pursuant to N.J.S.2C:13-1; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to subsection b. of N.J.S.2C:24-4; criminal restraint pursuant to N.J.S.2C:13-2; or false imprisonment pursuant to N.J.S.2C:13-3; or
- (2) Any offense under the laws of the United States, this State or any other state which is substantially equivalent.