



# Iowa General Assembly

## 2008 Legal Updates

Legislative Services Agency – Legal Services Division

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20081010/06-1856.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20081010/06-1856.pdf)

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### SEXUALLY VIOLENT PREDATOR DISCHARGE OR TRANSITIONAL RELEASE

Filed by the Iowa Supreme Court  
October 10, 2008

Harold Johnson v. Iowa District Court for Story County

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20081010/06-1856.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20081010/06-1856.pdf)

**Overview.** Harold Johnson was civilly committed as a sexually violent predator in July 2001. Mr. Johnson was previously convicted of assault to commit sexual abuse in 1985 and lascivious acts with a child in 1994. Prior to being civilly committed as a sexually violent predator, he was diagnosed with an antisocial personality disorder that predisposes him to commit future sexually violent offenses. Each person civilly committed as a sexually violent predator is entitled to an annual review of the person's status in the program. At the annual review the committed person may request a final hearing to determine if the person should be discharged from the program or is suitable for release into a transitional release program. Mr. Johnson has had five annual reviews and the court has denied Mr. Johnson's request for a final hearing at each of the annual reviews. At the most recent annual review Mr. Johnson presented evidence (a doctor's report) that suggests he no longer suffers from a mental abnormality, or at the very least, is no longer likely to commit a sexually violent offense if released because of his age. The court weighed the evidence and determined Johnson had not shown by a preponderance of the evidence that a final hearing should be held. Mr. Johnson appealed the decision of the court.

**Issue.** What standard should apply to determine if a final hearing for discharge or transitional release is warranted for a person committed as a sexually violent predator?

**Analysis.** The State argued that by recently changing the burden of proof from "probable cause" to "preponderance of the evidence" the Iowa General Assembly intended to impose a stricter burden of proof upon the committed person. The state also argued that a committed person must show a likelihood of winning at the annual review in order to be granted a final hearing. The Iowa Supreme Court (Court) concluded that under the state's interpretation of the statute, any committed person who is granted a final hearing would essentially be preapproved for discharge or release. The court further concluded that it would be illogical and contrary to the General Assembly's allocation of the burden of proof to interpret the statute to require the committed person to disprove the state's final hearing case at the annual review in order to obtain a final hearing.

**Conclusion.** The Court concluded a reasonable person would give a committed person a final hearing when there is competent evidence that would allow a fact finder to find reasonable doubt on the issue of whether the committed person's mental abnormality has changed. In determining whether a committed person is entitled to a final hearing, the Court established the following standard: If the committed person presents admissible evidence that could lead a fact finder to find reasonable doubt on the issue of whether the person's mental abnormality has changed such that the person is unlikely to engage in sexually violent offenses, then the committed person should be granted a final hearing. The Court concluded the committed person, Mr. Johnson, met this standard by submitting the doctor's report, which was competent evidence. A committed person is entitled to a jury trial at the final hearing to determine whether the committed person should be discharged from the program or released into a transitional release program.

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