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SENATE FILE 2031

BY DVORSKY

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to sexually violent predators.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2031

1 Section 1. NEW SECTION. 229A.1 LEGISLATIVE FINDINGS.

2 The general assembly finds that a small but extremely
3 dangerous group of sexually violent predators exists which is
4 made up of persons who do not have a mental disease or defect
5 that renders them appropriate for involuntary treatment
6 pursuant to the treatment provisions for mentally ill persons
7 under chapter 229, since that chapter is intended to provide
8 short-term treatment to persons with serious mental disorders
9 and then return them to the community. In contrast to persons
10 appropriate for civil commitment under chapter 229, sexually
11 violent predators generally have antisocial personality
12 features that are unamenable to existing mental illness
13 treatment modalities and that render them likely to engage in
14 sexually violent behavior. The general assembly finds that
15 sexually violent predators' likelihood of engaging in repeat
16 acts of predatory sexual violence is high and that the
17 existing involuntary commitment procedure under chapter 229 is
18 inadequate to address the risk these sexually violent
19 predators pose to society.

20 The general assembly further finds that the prognosis for
21 rehabilitating sexually violent predators in a prison setting
22 is poor, because the treatment needs of this population are
23 very long-term, and the treatment modalities for this
24 population are very different from the traditional treatment
25 modalities available in a prison setting or for persons
26 appropriate for commitment under chapter 229. Therefore, the
27 general assembly finds that a civil commitment procedure for
28 the long-term care and treatment of the sexually violent
29 predator is necessary.

30 Sec. 2. NEW SECTION. 229A.2 DEFINITIONS.

31 As used in this chapter:

32 1. "Agency with jurisdiction" means an agency which
33 releases a person serving a sentence or term of confinement
34 based upon a lawful order or authority, and includes but is
35 not limited to the department of corrections, the department

1 of human services, a judicial district department of
2 correctional services, and the Iowa board of parole.

3 2. "Mental abnormality" means a congenital or acquired
4 condition affecting the emotional or volitional capacity of a
5 person and predisposing that person to commit sexually violent
6 offenses to a degree which would constitute a menace to the
7 health and safety of others.

8 3. "Predatory" means acts directed toward a person with
9 whom a relationship has been established or promoted for the
10 primary purpose of victimization.

11 4. "Sexually motivated" means that one of the purposes for
12 commission of a crime is the purpose of sexual gratification
13 of the perpetrator of the crime.

14 5. "Sexually violent offense" means:

15 a. A violation of any provision of chapter 709.

16 b. A violation of any of the following if the offense
17 involves sexual abuse, attempted sexual abuse, or intent to
18 commit sexual abuse:

19 (1) Murder as defined in section 707.1.

20 (2) Kidnapping as defined in section 710.1.

21 (3) Burglary as defined in section 713.1.

22 (4) Child endangerment under section 726.6, subsection 1,
23 paragraph "e".

24 c. Sexual exploitation of a minor in violation of section
25 728.12, subsection 1.

26 d. Pandering involving a minor in violation of section
27 725.3, subsection 2.

28 e. An offense involving an attempt or conspiracy to commit
29 any offense referred to in this subsection.

30 f. An offense under prior law of this state or an offense
31 committed in another jurisdiction which would constitute an
32 equivalent offense under paragraphs "a" through "e".

33 g. Any act which, either at the time of sentencing for the
34 offense or subsequently during civil commitment proceedings
35 pursuant to this chapter, has been determined beyond a

1 reasonable doubt to have been sexually motivated.

2 6. "Sexually violent predator" means a person who has been
3 convicted of or charged with a sexually violent offense and
4 who suffers from a mental abnormality which makes the person
5 likely to engage in predatory acts constituting sexually
6 violent offenses, if not confined in a secure facility.

7 Sec. 3. NEW SECTION. 229A.3 NOTICE OF DISCHARGE OF
8 SEXUALLY VIOLENT PREDATOR -- IMMUNITY FROM LIABILITY --
9 MULTIDISCIPLINARY TEAM -- PROSECUTOR'S REVIEW COMMITTEE --
10 ASSESSMENT OF PERSON.

11 1. When it appears that a person may meet the definition
12 of a sexually violent predator, the agency with jurisdiction
13 shall give written notice to the attorney general and the
14 multidisciplinary team established in subsection 4, no later
15 than ninety days prior to any of the following events:

16 a. The anticipated discharge of a person who has been
17 convicted of a sexually violent offense from total
18 confinement, except that in the case of a person who is
19 returned to prison for no more than ninety days as a result of
20 revocation of parole, written notice shall be given as soon as
21 practicable following the person's readmission to prison.

22 b. The discharge of a person who has been charged with a
23 sexually violent offense and who has been determined to be
24 incompetent to stand trial pursuant to chapter 812.

25 c. The discharge of a person who has been found not guilty
26 by reason of insanity of a sexually violent offense.

27 d. The discharge of a person who has been found not guilty
28 of a sexually violent offense referred to under section
29 229A.2, subsection 5, paragraph "b", or of an attempt or
30 conspiracy to commit an offense under that paragraph, where
31 the court or jury who found the person not guilty answers the
32 special allegation in section 229A.14 in the affirmative.

33 2. If notice is required under subsection 1, the agency
34 with jurisdiction shall inform the attorney general and the
35 multidisciplinary team established in subsection 4, of both of

1 the following:

2 a. The person's name, identifying factors, anticipated
3 future residence, and offense history.

4 b. Documentation of any institutional evaluation and any
5 treatment received.

6 3. The agency with jurisdiction, its employees, officials,
7 members of the multidisciplinary team established in
8 subsection 4, members of the prosecutor's review committee
9 appointed as provided in subsection 5, and individuals
10 contracting, appointed, or volunteering to perform services
11 under this section shall be immune from liability for any
12 good-faith conduct under this section.

13 4. The director of the department of corrections shall
14 establish a multidisciplinary team which may include
15 individuals from other state agencies to review available
16 records of each person referred to such team pursuant to
17 subsection 1. The team, within thirty days of receiving
18 notice, shall assess whether or not the person meets the
19 definition of a sexually violent predator. The team shall
20 notify the attorney general of its assessment.

21 5. The attorney general shall appoint a prosecutor's
22 review committee to review the records of each person referred
23 to the attorney general pursuant to subsection 1. The
24 prosecutor's review committee shall assist the attorney
25 general in the determination of whether or not the person
26 meets the definition of a sexually violent predator. The
27 assessment of the multidisciplinary team shall be made
28 available to the attorney general and the prosecutor's review
29 committee.

30 Sec. 4. NEW SECTION. 229A.4 PETITION, TIME, CONTENTS.

31 If it appears that a person presently confined may be a
32 sexually violent predator and the prosecutor's review
33 committee has determined that the person meets the definition
34 of a sexually violent predator, the attorney general may file
35 a petition, within seventy-five days of the date the attorney

1 general received the written notice by the agency of
2 jurisdiction pursuant to section 229A.3, alleging that the
3 person is a sexually violent predator and stating sufficient
4 facts to support such an allegation.

5 Sec. 5. NEW SECTION. 229A.5 PERSON TAKEN INTO CUSTODY,
6 DETERMINATION OF PROBABLE CAUSE, HEARING, EVALUATION.

7 1. Upon filing of a petition under section 229A.4, the
8 court shall make a preliminary determination as to whether
9 probable cause exists to believe that the person named in the
10 petition is a sexually violent predator. Upon a preliminary
11 finding of probable cause, the court shall direct that the
12 person named in the petition be taken into custody and that
13 the person be served with a copy of the petition and any
14 supporting documentation and notice of the procedures required
15 by this chapter.

16 2. Within seventy-two hours after being taken into
17 custody, a hearing shall be held to determine whether probable
18 cause exists to believe the detained person is a sexually
19 violent predator. At the probable cause hearing, the detained
20 person shall have the following rights:

21 a. To be provided with prior notice of date, time, and
22 location of the probable cause hearing.

23 b. To respond to the preliminary finding of probable
24 cause.

25 c. To appear in person at the hearing.

26 d. To be represented by counsel.

27 e. To present evidence on the respondent's own behalf.

28 f. To cross-examine witnesses who testify against the
29 respondent.

30 g. To view and copy all petitions and reports in the
31 possession of the court.

32 3. At the hearing, the state may rely upon the petition
33 filed under subsection 1 but may also supplement the petition
34 with additional documentary evidence or live testimony.

35 4. At the conclusion of the hearing, the court shall enter

1 an order which does both of the following:

2 a. Verifies the respondent's identity.

3 b. Determines whether probable cause exists to believe
4 that the respondent is a sexually violent predator.

5 5. If the court determines that probable cause does exist,
6 the court shall direct that the respondent be transferred to
7 an appropriate secure facility, including, but not limited to,
8 a county jail, for an evaluation as to whether the respondent
9 is a sexually violent predator. The evaluation shall be
10 conducted by a person deemed to be professionally qualified to
11 conduct such an examination.

12 Sec. 6. NEW SECTION. 229A.6 COUNSEL AND EXPERTS,
13 INDIGENT PERSONS.

14 1. A respondent to a petition alleging the person to be a
15 sexually violent predator shall be entitled to the assistance
16 of counsel upon the filing of the petition under section
17 299A.4 and, if the respondent is indigent, the court shall
18 appoint counsel to assist the respondent.

19 2. If a respondent is subjected to an examination under
20 this chapter, the respondent may retain experts or
21 professional persons to perform an independent examination on
22 the respondent's behalf. If the respondent wishes to be
23 examined by a qualified expert or professional person of the
24 respondent's own choice, the examiner of the respondent's
25 choice shall be given reasonable access to the respondent for
26 the purpose of the examination, as well as access to all
27 relevant medical and psychological records and reports. If
28 the respondent is indigent, the court, upon the respondent's
29 request, shall determine whether the services are necessary
30 and the reasonable compensation for the services. If the
31 court determines that the services are necessary and the
32 requested compensation for the services is reasonable, the
33 court shall assist the respondent in obtaining an expert or
34 professional person to perform an examination or participate
35 in the trial on the respondent's behalf. The court shall

1 approve payment for such services upon the filing of a
2 certified claim for compensation supported by a written
3 statement specifying the time expended, services rendered,
4 expenses incurred on behalf of the respondent, and
5 compensation received in the same case or for the same
6 services from any other source.

7 Sec. 7. NEW SECTION. 229A.7 TRIAL, DETERMINATION,
8 COMMITMENT PROCEDURE, INTERAGENCY AGREEMENTS, MISTRIALS.

9 1. Within sixty days after the completion of any hearing
10 held pursuant to section 229A.5, the court shall conduct a
11 trial to determine whether the respondent is a sexually
12 violent predator. The trial may be continued upon the request
13 of either party and a showing of good cause, or by the court
14 on its own motion in the due administration of justice, and
15 when the respondent will not be substantially prejudiced. The
16 respondent, the attorney general, or the judge shall have the
17 right to demand that the trial be before a jury. Such demand
18 for the trial to be before a jury shall be filed, in writing,
19 at least four days prior to trial. The number and selection
20 of jurors shall be determined as provided in chapter 607A. If
21 no demand is made, the trial shall be before the court.

22 2. At trial, the court or jury shall determine whether,
23 beyond a reasonable doubt, the respondent is a sexually
24 violent predator. If the determination that the respondent is
25 a sexually violent predator is made by a jury, the
26 determination shall be by unanimous verdict of such jury.

27 If the court or jury determines that the respondent is a
28 sexually violent predator, the respondent shall be committed
29 to the custody of the director of the department of human
30 services for control, care, and treatment until such time as
31 the person's mental abnormality has so changed that the person
32 is safe to be at large. The determination may be appealed.

33 3. The control, care, and treatment of a person determined
34 to be a sexually violent predator shall be provided at a
35 facility operated by the department of human services. At all

1 times, persons committed for control, care, and treatment by
2 the department of human services pursuant to this chapter
3 shall be kept in a secure facility and those patients shall be
4 segregated at all times from any other patient under the
5 supervision of the department of human services. A person
6 committed pursuant to this chapter to the custody of the
7 department of human services may be kept in a facility or
8 building separate from any other patient under the supervision
9 of the department of human services. The department of human
10 services may enter into an interagency agreement with the
11 department of corrections for the confinement of patients who
12 have been determined to be sexually violent predators.

13 Patients who are in the confinement of the director of the
14 department of corrections pursuant to an interagency agreement
15 shall be housed and managed separately from criminal offenders
16 in the custody of the director of the department of
17 corrections, and except for occasional instances of supervised
18 incidental contact, shall be segregated from those offenders.

19 4. If the court or jury is not satisfied beyond a
20 reasonable doubt that the respondent is a sexually violent
21 predator, the court shall direct the respondent's release.
22 Upon a mistrial, the court shall direct that the respondent be
23 held at an appropriate secure facility, including, but not
24 limited to, a county jail, until another trial is conducted.
25 Any subsequent trial following a mistrial shall be held within
26 ninety days of the previous trial, unless such subsequent
27 trial is continued as provided in subsection 1.

28 5. If a person charged with a sexually violent offense has
29 been found incompetent to stand trial or has been found not
30 guilty of a sexually violent offense by reason of insanity,
31 and the person is about to be discharged pursuant to section
32 812.5, if a petition has been filed seeking the person's
33 commitment under this chapter, the court shall first hear
34 evidence and determine whether the person did commit the act
35 or acts charged. At the hearing on this issue, the rules of

1 evidence applicable in criminal cases shall apply, and all
2 constitutional rights available to defendants at criminal
3 trials, other than the right not to be tried while
4 incompetent, shall apply. After hearing evidence on this
5 issue, the court shall make specific findings on whether the
6 person did commit the act or acts charged, the extent to which
7 the person's incompetence or insanity affected the outcome of
8 the hearing, including its effect on the person's ability to
9 consult with and assist counsel and to testify on the person's
10 own behalf, the extent to which the evidence could be
11 reconstructed without the assistance of the person, and the
12 strength of the prosecution's case. If after the conclusion
13 of the hearing on this issue, the court finds, beyond a
14 reasonable doubt, that the person did commit the act or acts
15 charged, the court shall enter a final order, appealable by
16 the person, on that issue, and may proceed to consider whether
17 the person should be committed pursuant to this chapter.

18 Sec. 8. NEW SECTION. 229A.8 ANNUAL EXAMINATIONS,
19 DISCHARGE PETITIONS BY PERSONS COMMITTED.

20 1. Each person committed under this chapter shall have a
21 current examination of the person's mental abnormality made
22 once every year. The person may retain, or if the person is
23 indigent and so requests, the court may appoint a qualified
24 expert or professional person to examine such person, and such
25 expert or professional person shall be given access to all
26 records concerning the person.

27 2. The annual report shall be provided to the court that
28 committed the person under this chapter. The court shall
29 conduct an annual review and probable cause hearing on the
30 status of the committed person.

31 3. Nothing contained in this chapter shall prohibit the
32 person from otherwise petitioning the court for discharge at
33 the probable cause hearing. The director of human services
34 shall provide the committed person with an annual written
35 notice of the person's right to petition the court for

1 discharge over the director's objection. The notice shall
2 contain a waiver of rights. The director shall forward the
3 notice and waiver form to the court with the annual report.

4 4. The committed person shall have a right to have an
5 attorney represent the person at the probable cause hearing
6 but the person is not entitled to be present at the hearing.
7 If the court at the hearing determines that probable cause
8 exists to believe that the person's mental abnormality has so
9 changed that the person is safe to be at large and will not
10 engage in predatory acts or sexually violent offenses if
11 discharged, then the court shall set a final hearing on the
12 issue.

13 5. At the final hearing, the committed person shall be
14 entitled to be present and is entitled to the benefit of all
15 constitutional protections that were afforded the person at
16 the original commitment proceeding. The attorney general
17 shall represent the state and shall have a right to a jury
18 trial and to have the committed person evaluated by experts
19 chosen by the state. The committed person shall also have the
20 right to have experts evaluate the person on the person's
21 behalf. The court shall appoint an expert if the person is
22 indigent and requests an appointment. The burden of proof at
23 the hearing shall be upon the state to prove beyond a
24 reasonable doubt that the committed person's mental
25 abnormality or personality disorder remains such that the
26 person is not safe to be at large and if discharged is likely
27 to engage in acts of sexual violence.

28 Sec. 9. NEW SECTION. 229A.9 DETENTION AND COMMITMENT TO
29 CONFORM TO CONSTITUTIONAL REQUIREMENTS.

30 The involuntary detention or commitment of persons under
31 this chapter shall conform to constitutional requirements for
32 care and treatment.

33 Sec. 10. NEW SECTION. 229A.10 PETITION FOR DISCHARGE --
34 PROCEDURE.

35 If the director of human services determines that the

1 person's mental abnormality has so changed that the person is
2 not likely to commit predatory acts or sexually violent
3 offenses if discharged, the director shall authorize the
4 person to petition the court for discharge. The petition
5 shall be served upon the court and the attorney general. The
6 court, upon receipt of the petition for discharge, shall order
7 a hearing within thirty days. The attorney general shall
8 represent the state, and shall have the right to have the
9 petitioner examined by an expert or professional person of the
10 attorney general's choice. The hearing shall be before a jury
11 if demanded by either the petitioner or the attorney general.
12 The burden of proof shall be upon the attorney general to show
13 beyond a reasonable doubt that the petitioner's mental
14 abnormality or personality disorder remains such that the
15 petitioner is not safe to be at large and that if discharged
16 is likely to commit predatory acts or sexually violent
17 offenses.

18 Sec. 11. NEW SECTION. 229A.11 SUBSEQUENT DISCHARGE
19 PETITIONS, LIMITATIONS.

20 Nothing in this chapter shall prohibit a person from filing
21 a petition for discharge pursuant to this chapter. However,
22 if a person has previously filed a petition for discharge
23 without the authorization of the director of human services,
24 and the court determines either upon review of the petition or
25 following a hearing that the petition was frivolous or that
26 the petitioner's condition had not so changed that the person
27 was safe to be at large, then the court shall summarily deny
28 the subsequent petition unless the petition contains facts
29 upon which a court could find the condition of the petitioner
30 had so changed that a hearing was warranted. Upon receipt of
31 a first or subsequent petition from a committed person without
32 the director's authorization, the court shall endeavor
33 whenever possible to review the petition and determine if the
34 petition is based upon frivolous grounds. If the court
35 determines that a petition is frivolous, the court shall deny

1 the petition without a hearing.

2 Sec. 12. NEW SECTION. 229A.12 DIRECTOR OF HUMAN SERVICES
3 -- RESPONSIBILITY FOR COSTS -- DUTIES -- REIMBURSEMENT.

4 The director of human services shall be responsible for all
5 costs relating to the evaluation and treatment of persons
6 committed to the director's custody under any provision of
7 this chapter. Reimbursement may be obtained by the director
8 from the patient and any person legally liable or bound by
9 contract for the support of the patient for the cost of care
10 and treatment provided.

11 Sec. 13. NEW SECTION. 229A.13 NOTICE TO VICTIMS OF
12 DISCHARGE OF PERSONS COMMITTED.

13 In addition to any other information required to be
14 released under this chapter, prior to the discharge of a
15 person committed under this chapter, the director of human
16 services shall give written notice of the person's discharge
17 to any living victim of the person's activities or crime whose
18 address is known to the director or, if the victim is
19 deceased, to the victim's family, if the family's address is
20 known. Failure to notify shall not be a reason for
21 postponement of discharge. Nothing in this section shall
22 create a cause of action against the state or an employee of
23 the state acting within the scope of the employee's employment
24 as a result of the failure to notify pursuant to this action.

25 Sec. 14. NEW SECTION. 229A.14 SPECIAL ALLEGATION OF
26 SEXUAL MOTIVATION -- PROCEDURE -- WITHDRAWAL OR DISMISSAL.

27 1. Except as otherwise provided in subsection 4, the
28 county attorney shall file a special allegation of sexual
29 motivation within ten days after arraignment, when sufficient
30 admissible evidence exists, which, when considered with the
31 most plausible, reasonably foreseeable defense that could be
32 raised under the evidence, would justify a finding of sexual
33 motivation by a reasonable and objective fact finder.

34 2. In a criminal case in which a special allegation of
35 sexual motivation has been filed, the state shall prove beyond

1 a reasonable doubt that the crime was sexually motivated. The
2 court shall make a finding of fact of whether or not a sexual
3 motivation was present at the time of the commission of the
4 crime, or if a jury trial is had, the jury shall return a
5 special verdict as to whether or not the crime was sexually
6 motivated.

7 3. The county attorney shall not withdraw the special
8 allegation of sexual motivation without approval of the court
9 through an order of dismissal of the special allegation. The
10 court shall not dismiss the special allegation unless it finds
11 that such an order is necessary to correct an error in the
12 initial charging decision or unless evidentiary problems exist
13 which make proving the special allegation doubtful.

14 4. This section shall not apply to criminal cases alleging
15 a violation of chapter 709 or a case in which the commission
16 of a sex act is an element of the offense charged.

17 Sec. 15. NEW SECTION. 229A.15 SEVERABILITY.

18 If any provision of this chapter or the application thereof
19 to any person or circumstances is held invalid, the invalidity
20 shall not affect other provisions or applications of the
21 chapter which can be given effect without the invalid
22 provisions or application and, to this end, the provisions of
23 this chapter are severable.

24 Sec. 16. NEW SECTION. 229A.16 RELEASE OF CONFIDENTIAL OR
25 PRIVILEGED INFORMATION AND RECORDS.

26 Notwithstanding anything in chapter 22 to the contrary,
27 relevant information and records which would otherwise be
28 confidential or privileged shall be released to the agency
29 with jurisdiction or the attorney general for the purpose of
30 meeting the notice requirement provided in section 229A.3 and
31 determining whether a person is or continues to be a sexually
32 violent predator.

33 Sec. 17. NEW SECTION. 229A.17 COURT RECORDS -- SEALED
34 AND OPENED BY COURT ORDER.

35 Any psychological reports, drug and alcohol reports,

1 treatment records, reports of any diagnostic center, medical
2 records, or victim impact statements which have been submitted
3 to the court or admitted into evidence under this chapter
4 shall be part of the record but shall be sealed and opened
5 only on order of the court.

6 Sec. 18. NEW SECTION. 299A.18 SHORT TITLE.

7 This chapter shall be known and may be cited as the
8 "Sexually Violent Predator Act".

9 EXPLANATION

10 This bill establishes a procedure for the civil commitment
11 of persons who are determined to be sexually violent
12 predators. Under the bill, a sexually violent predator is a
13 person who has been convicted of or charged with a sexually
14 violent offense and who suffers from a mental abnormality
15 which makes the person likely to engage in predatory acts
16 constituting sexually violent offenses, if not confined in a
17 secure facility. A sexually violent offense is defined under
18 the bill as violation of the sexual abuse chapter, chapter
19 709; the commission of murder, kidnapping, burglary, or
20 knowingly permitting the continual sexual or physical abuse of
21 a child or a minor, if the commission of any of the offenses
22 involved sexual abuse, attempted sexual abuse, or the intent
23 to commit sexual abuse; sexual exploitation of a minor;
24 pandering involving a minor; any offense involving an attempt
25 or conspiracy to commit one of the enumerated offenses; or any
26 offense under prior state law or the law of another
27 jurisdiction which would be the equivalent of one of the
28 enumerated offenses.

29 Not later than 90 days before the discharge of a person who
30 is believed to be a sexually violent predator, the agency
31 which is discharging the person is required to give notice to
32 the attorney general and a department of corrections
33 multidisciplinary team of the impending discharge of the
34 person from confinement, treatment, or other custody. The
35 multidisciplinary team is to review available records to

1 determine whether the person in question meets the definition
2 of a sexually violent predator, and notify the attorney
3 general as to the results of its assessment. The attorney
4 general is to establish a prosecutor's review committee which,
5 like the corrections multidisciplinary team, is to conduct a
6 review of the available information, including the
7 multidisciplinary team's assessment, and to assist the
8 attorney general in making a determination as to whether the
9 person is a sexually violent predator.

10 Within 75 days of receipt of the notice from the
11 discharging agency, if it appears that the person is a
12 sexually violent predator, the attorney general may file a
13 petition alleging that the person is a sexually violent
14 predator. The court is to make a preliminary determination of
15 the existence of probable cause to support the petition. If
16 the preliminary determination is affirmative, the court shall
17 issue a custody order and an order for hearing on the issue of
18 probable cause. At the hearing, the person alleged to be a
19 sexually violent predator is to have the right to be present,
20 be represented by counsel, present and cross-examine the
21 evidence, and view and copy all petitions and reports. If the
22 court determines that there is probable cause to believe that
23 the person is a sexually violent predator, the court is to set
24 the matter down for trial and order a professional evaluation
25 of the person.

26 The trial on the issue of whether the person is a sexually
27 violent predator is to be held within 60 days after completion
28 of the probable cause hearing. The trial may be heard before
29 a jury or a judge. The person, the attorney general, or the
30 judge has the right to demand that the case be heard before a
31 jury. At trial, the burden of proof is beyond a reasonable
32 doubt. If the matter is heard by a jury, any determination
33 that the person is a sexually violent predator must be by
34 unanimous verdict. If the person is determined to be a
35 sexually violent predator, the person is to be committed to

1 the custody of the director of the department of human
2 services for control, care, and treatment until the person may
3 be safely discharged. If a person is not found to be a
4 sexually violent predator, the court is to direct the person's
5 discharge from custody. If the trial proceedings result in a
6 mistrial, the person is to be held in a secure facility until
7 a new trial is conducted, which must be within 90 days of the
8 previous proceeding.

9 If the person is alleged to be a sexually violent predator,
10 but has been found to be incompetent to stand trial or not
11 guilty by reason of insanity, and is about to be discharged,
12 the court must first conduct a hearing to determine if the
13 person actually did commit the act or acts charged before the
14 court can conduct a trial to determine if the person should be
15 committed. That hearing is to be conducted in the same manner
16 and under the same procedures as a criminal trial. If the
17 court finds that the person did commit the acts alleged, then
18 the matter may proceed to trial on the sexually violent
19 predator commitment issue.

20 A person who is committed as a sexually violent predator is
21 to be committed to the care, custody, and control of the
22 department of human services, although the department may
23 contract with the department of corrections for placement of
24 the person at a facility under the direction of the department
25 of corrections. All persons who are committed as sexually
26 violent predators are to be segregated from persons who are
27 otherwise in the care of the department of human services or
28 the department of corrections. Persons who are committed to
29 the custody of the department of human services may be located
30 in a facility that is separate from facilities used to house
31 other individuals in the department's custody and care.

32 A person who has been committed as a sexually violent
33 predator shall be examined annually by qualified
34 professionals. The findings are to be submitted in a report
35 to the court, which shall annually review the person's

1 commitment status. The person may petition the court for
2 discharge at any time and the filing of previous petitions
3 will not jeopardize the person's right to petition the court
4 for discharge. The director of human services may authorize a
5 person to petition for discharge also, if the director
6 believes that the person's condition has so changed that the
7 person may be safely discharged. At any hearing on a
8 petition, the person committed has the right to be represented
9 by counsel but is not entitled to be present at the hearing.
10 If the court finds that probable cause exists to believe that
11 the person may be safely discharged, a hearing must be held
12 and the person is entitled to be present and is entitled to
13 all of the same protections that they were entitled to at the
14 original commitment trial.

15 Any involuntary detention or commitment is to conform to
16 constitutional requirements for care and treatment. The cost
17 of the care and treatment provided is the responsibility of
18 the department of human services, although the department may
19 seek reimbursement from the person committed or anyone legally
20 liable or bound by contract for the support of the person
21 committed.

22 Prior to the discharge of a person who has been committed
23 as a sexually violent offender, victims of the person's
24 activities or crimes are to be notified. A failure to notify
25 does not create a cause of action against the state or
26 employee of the state, however.

27 Except in the case of violations of the sexual abuse
28 chapter or crimes in which the commission of a sex act is an
29 element, if sufficient supporting evidence exists, the county
30 attorney is to include a special allegation of sexual
31 motivation with the crime charged and the jury is to return a
32 special finding on that allegation.

33 Records which would otherwise be confidential under chapter
34 22 may be released to the agency which is about to discharge a
35 person believed to be a sexually violent predator or to the

1 attorney general, for purposes of complying with the notice
2 and other requirements of the bill. Any psychological
3 reports, drug and alcohol reports, treatment records,
4 diagnostic reports, or other medical records or victim impact
5 statements which are submitted to the court are a part of the
6 record but shall be sealed and opened only on order of the
7 court.

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