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SENATE FILE 2392
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2182)

Passed Senate, ^(P.587) Date 3/5/98 Passed House, ^(P.1586) Date 4/14/98
Vote: Ayes 50 Nays 0 Vote: Ayes 94 Nays 3
Approved March 6, 1998

A BILL FOR

1 An Act relating to the confinement and treatment of sex
2 offenders.

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

SENATE FILE 2398

S-5130

1 Amend Senate File 2398, as follows:

2 1. Page 1, line 28, by inserting after the word
3 "life." the following: "In determining whether a
4 conviction is a first or second conviction under this
5 subsection, a prior conviction for a criminal offense
6 committed in another jurisdiction which would
7 constitute a violation of section 709.3, subsection 2,
8 if committed in this state, shall be considered a
9 conviction under this subsection."

10 2. Page 2, line 9, by inserting after the word
11 "release." the following: "In determining whether a
12 conviction is a first or second conviction under this
13 section, a prior conviction for a criminal offense
14 committed in another jurisdiction which would
15 constitute a violation of section 709.3, subsection 2,
16 if committed in this state, shall be considered a
17 conviction under this section."

Adopted 3/5/98 (P.587) By JEFF ANGELO
EUGENE S. FRAISE

S-5130 FILED MARCH 3, 1998

2398

1 Section 1. Section 901A.2, subsections 3 and 4, Code 1997.
2 are amended to read as follows:

3 3. A Except as otherwise provided in subsection 4A, a
4 person convicted of a sexually predatory offense which is a
5 felony, who has a prior conviction for a sexually predatory
6 offense, shall be sentenced to and shall serve twice the
7 maximum period of incarceration for the offense, or twenty-
8 five years, whichever is greater, notwithstanding any other
9 provision of the Code to the contrary. A person sentenced
10 under this subsection shall not have the person's sentence
11 reduced under chapter 903A or otherwise by more than fifteen
12 percent.

13 4. A Except as otherwise provided in subsection 4A, a
14 person convicted of a sexually predatory offense which is a
15 felony who has previously been sentenced under subsection 3
16 shall be sentenced to life in prison on the same terms as a
17 class "A" felon under section 902.1, notwithstanding any other
18 provision of the Code to the contrary. In order for a person
19 to be sentenced under this subsection, the prosecuting
20 attorney shall allege and prove that this section is
21 applicable to the person.

22 Sec. 2. Section 901A.2, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 4A. A person who has been convicted of a
25 violation of section 709.3, subsection 2, shall, upon a second
26 conviction for a violation of section 709.3, subsection 2, be
27 committed to the custody of the director of the Iowa
28 department of corrections for the rest of the person's life.
29 The terms and conditions applicable to sentences for class "A"
30 felons under chapters 901 through 909 shall apply to persons
31 sentenced under this subsection.

32 Sec. 3. NEW SECTION. 903B.1 HORMONAL INTERVENTION
33 THERAPY -- CERTAIN SEX OFFENSES.

34 1. A person who has been convicted of a serious sex
35 offense may, upon a first conviction and in addition to any

1 other punishment provided by law, be required to undergo
2 medroxyprogesterone acetate treatment as part of any
3 conditions of release imposed by the court or the board of
4 parole. The treatment prescribed in this section may utilize
5 an approved pharmaceutical agent other than
6 medroxyprogesterone acetate. Upon a second or subsequent
7 conviction, the court or the board of parole shall require the
8 person to undergo medroxyprogesterone acetate treatment as a
9 condition of release. This section shall not apply if the
10 person voluntarily undergoes a permanent surgical alternative
11 approved by the court or the board of parole.

12 2. If a person is placed on probation and is not in
13 confinement at the time of sentencing, the presentence
14 investigation shall include a plan for initiation of treatment
15 as soon as is reasonably possible after the person is
16 sentenced. If the person is in confinement prior to release
17 on probation or parole, treatment shall commence prior to the
18 release of the person from confinement. Conviction of a
19 serious sex offense shall constitute exceptional circumstances
20 warranting a presentence investigation under section 901.2.

21 3. If the serious sex offense is a felony, the court may
22 include, in addition to any other punishment provided by law,
23 that the person receive a special sentence of community
24 supervision for life. The special sentence of community
25 supervision required by this subsection shall commence upon
26 completion of the sentence imposed under any applicable
27 criminal sentencing provisions for the underlying serious sex
28 offense and shall be supervised as if on parole, shall include
29 the same treatment terms and conditions as required in
30 subsection 1, and may include any other terms and conditions
31 deemed appropriate to protect the public and promote the
32 rehabilitation of the person. A person who violates a
33 condition of a special sentence of community supervision
34 commits a felony offense of the same degree as the serious sex
35 offense for which the special sentence of community

1 supervision was ordered.

2 4. For purposes of this section, a "serious sex offense"
3 means any of the following offenses in which the victim was a
4 child who was, at the time the offense was committed, twelve
5 years of age or younger:

6 a. Sexual abuse in the first degree, in violation of
7 section 709.2.

8 b. Sexual abuse in the second degree, in violation of
9 section 709.3.

10 c. Sexual abuse in the third degree, in violation of
11 section 709.4.

12 d. Lascivious acts with a child, in violation of section
13 709.8.

14 e. Assault with intent, in violation of section 709.11.

15 f. Indecent contact with a minor, in violation of section
16 709.12.

17 g. Lascivious conduct with a minor, in violation of
18 section 709.14.

19 h. Sexual exploitation by a counselor in violation of
20 section 709.15.

21 i. Sexual exploitation of a minor, in violation of section
22 728.12, subsections 1 and 2.

23 5. The department of corrections, in consultation with the
24 board of parole, shall adopt rules which provide for the
25 initiation of medroxyprogesterone acetate treatment prior to
26 the parole or work release of a person who has been convicted
27 of a serious sex offense and who is required to undergo
28 treatment as a condition of release by the board of parole.
29 The department's rules shall also establish standards for the
30 supervision of the treatment by the judicial district
31 department of correctional services during the period of
32 release. Each district department of correctional services
33 shall adopt policies and procedures which provide for the
34 initiation or continuation of medroxyprogesterone acetate
35 treatment as a condition of release for each person who is

1 required to undergo the treatment by the court or the board of
2 parole. The board of parole shall, in consultation with the
3 department of corrections, adopt rules which relate to
4 initiation or continuation of medroxyprogesterone acetate
5 treatment as a condition of any parole or work release. Any
6 rules, standards, and policies and procedures adopted shall
7 provide for the continuation of the treatment until the agency
8 in charge of supervising the treatment determines that the
9 treatment is no longer necessary.

10 Sec. 4. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE.
11 The legislative council is requested to authorize an interim
12 study committee to issue a report to the general assembly
13 which convenes in 1999, concerning the treatments available
14 and used in the United States and other countries to
15 rehabilitate sex offenders and deter those persons from
16 engaging in criminal sexual acts or activities in the future.

17 EXPLANATION

18 This bill provides for the imposition of a life sentence
19 for persons who commit repeat acts of sexual abuse against
20 children under the age of 12, provides for the use of hormonal
21 intervention therapy for serious sex offenses, and contains a
22 request for a legislative interim study on sex offender
23 treatment.

24 Currently, a person who commits sexual abuse of a child
25 under the age of 12 commits sexual abuse in the second degree
26 under Code section 709.3. Sexual abuse in the second degree
27 is a class "B" felony punishable by a sentence of imprisonment
28 not to exceed 25 years, 85 percent of which must be served
29 before the person can be released. The bill provides that if
30 a person is convicted of a violation of section 709.3 and has
31 previously been convicted of a violation of that section, the
32 person is to be sentenced to life imprisonment on the same
33 terms and conditions that apply to class "A" felons.

34 The bill also creates new Code section 903B.1, which
35 provides that persons who are convicted of certain enumerated

1 "serious sex offenses" may, on a first conviction, and shall,
2 on a second or subsequent conviction, be required to undergo
3 hormonal intervention therapy by the court or board of parole.
4 If the person has been confined, the treatment is to commence
5 before the person is released. If the person was not confined
6 at the time of sentencing, a plan for commencement of
7 treatment is to be developed and included in the presentence
8 investigation report.

9 If the serious sex offense for which a person has been
10 convicted is a felony, the court is given authority to provide
11 for a special sentence of lifetime community supervision of
12 the person. The community supervision sentence is to commence
13 upon completion of the sentence for the underlying serious sex
14 offense. The community supervision is to be conducted in the
15 same manner as if the person were on parole and, in addition
16 to any other conditions, is to include the same treatment
17 conditions that apply in regular parole supervision of serious
18 sex offenders. A person who is placed on lifetime community
19 supervision and who violates a condition of the supervision
20 commits a felony offense of the same degree as the serious sex
21 offense for which the special sentence of community
22 supervision was ordered. "Serious sex offenses" includes
23 sexual abuse in the first, second, or third degree, lascivious
24 acts with a child, indecent contact with a minor, assault with
25 intent to commit sexual abuse, sexual exploitation by a
26 counselor, and sexual exploitation of a minor.

27 The bill also contains a provision requesting that the
28 legislative council establish an interim study committee
29 concerning the treatments available and used in the United
30 States and other countries to rehabilitate persons who have
31 engaged in criminal sexual acts or activities and deter them
32 from future acts. The committee is to issue a report to the
33 general assembly which convenes in 1999.

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**SENATE FILE 2398
FISCAL NOTE**

The estimate for House Amendment S-5641 to Senate File 2398 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House Amendment S-5641 to Senate File 2398 establishes a procedure for the civil commitment of persons determined to be sexually violent predators. A sexually violent predator is a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which predisposes the person to reoffend if not confined. The Amendment requires the entity discharging the offender to notify the Office of the Attorney General prior to the release of the offender to allow for a trial to determine if the offender is a sexually violent predator. A person adjudicated as a sexually violent predator is remitted to the custody of the Department of Human Services for care and treatment in a secure facility. Provisions are made for annual reviews and for discharge petitions and hearings. Legal counsel for indigent persons is provided through the Indigent Defense Fund or Office of the Public Defender.

ASSUMPTIONS

1. The Sexually Violent Predators Act will become effective July 1, 1998. Costs are provided for entire fiscal years beginning FY 1999.
2. Eleven offenders per year will be tried, and six offenders per year will be committed as sexually violent predators.
3. Commitment trials and discharge hearings will be jury trials. Commitment trials will take two weeks to complete. Discharge hearings will require one week to complete.
4. Indigent offenders will be provided legal counsel either by the Office of the Public Defender or private attorneys hired through the Indigent Defense Fund. A two-week commitment hearing will cost approximately \$12,000.
5. Appeals, annual reviews, and discharge hearings will first occur in the second fiscal year. There will be six appeals, six annual reviews, and one discharge hearing in FY 2000.
6. During FY 1999 and FY 2000, the Department of Human Services will lease a 20-bed treatment unit within an existing Department of Corrections' facility. Capital expenses for a new facility will be incurred after FY 2000.
7. The Department of Human Services will contract with the Department of Corrections for food, maintenance, medical, security, and other operational services. The contract will cost \$88,000 in FY 1999 and will increase to \$96,000 in FY 2000 to provide a 10.0% inflationary adjustment and fund an increase in the average daily census.

FISCAL IMPACT

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The estimated State General Fund cost of Amendment S-5641 to SF 2398 to establish a civil commitment procedure and facility for sexually violent predators will be approximately \$2.1 million in FY 1999 and approximately \$3.0 million in FY 2000.

The breakdown of the State General Fund estimate is as follows:

	<u>FY 1999</u>	<u>FY 2000</u>
<u>Trial Costs</u>		
Department of Justice -		
Commitment Hearings	\$ 269,000	\$ 269,000
Appeals	0	149,000
Reviews/Discharge Hearings	0	7,000
Total Dept. of Justice costs	<u>269,000</u>	<u>425,000</u>
Total Indigent Defense/Public Defender	132,000	168,000
Judicial Branch -		
Commitment Hearings	123,000	123,000
Appeals	0	42,000
Reviews/Discharge Hearings	0	10,000
Computer (one-time)	2,000	0
Special Allegation	190,000	190,000
Total Judicial Branch costs	<u>315,000</u>	<u>365,000</u>
Total Trial costs	716,000	958,000
<u>Housing/Review Costs</u>		
Dept. of Human Services -		
Salaries	502,000	725,000
Support	36,000	50,000
Rent, Equip., Maint.	474,000	378,000
Data Processing	86,000	8,000
Legal Fees	323,000	903,000
Total DHS-Housing/Review costs	<u>1,421,000</u>	<u>2,064,000</u>
Total State Cost	<u>\$ 2,137,000</u>	<u>\$ 3,022,000</u>

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
 Department of Corrections
 Department of Human Services
 Department of Justice
 Iowa Judicial Branch

(LSB 4351SV.3, MDF)

FILED APRIL 15, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 2398
FISCAL NOTE**

The estimate for Amendment H-8542 to Senate File 2398 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-8542 to Senate File 2398 establishes a procedure for the civil commitment of persons determined to be sexually violent predators. A sexually violent predator is a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which predisposes the person to reoffend if not confined. The Amendment requires the entity discharging the offender to notify the Office of the Attorney General 90 days prior to the release of the offender to allow for a trial to determine if the offender is a sexually violent predator. A person adjudicated as a sexually violent predator is remitted to the custody of the Department of Human Services for care and treatment in a secure facility. Provisions are made for annual reviews and for discharge petitions and hearings.

ASSUMPTIONS

1. The Sexually Violent Predators Act will become effective July 1, 1998. Costs are provided for entire fiscal years beginning FY 1999.
2. Eleven offenders per year will be tried and six offenders per year will be committed as sexually violent predators.
3. Commitment trials and discharge hearings will be jury trials. Commitment trials will take two weeks to complete. Discharge hearings will require one week to complete.
4. Offenders will be represented by court-appointed attorneys financed by the counties. A two-week commitment hearing will cost approximately \$12,000.
5. Appeals, annual reviews, and discharge hearings will first occur in the second fiscal year. There will be six appeals, six annual reviews, and one discharge hearing in FY 2000.
6. During FY 1999 and FY 2000, the Department of Human Services will lease a 20-bed treatment unit within an existing Department of Corrections' facility. Capital expenses for a new facility will be incurred after FY 2000.
7. The Department of Human Services will contract with the Department of Corrections for food, maintenance, medical, security, and other operational services. The contract will cost \$88,000 in FY 1999 and will increase to \$96,000 in FY 2000 to provide a 10.0% inflationary adjustment and fund an increase in the average daily census.

FISCAL IMPACT

The estimated State General Fund impact of Amendment H-8542 to SF 2398 to establish a civil commitment procedure and facility for sexually violent predators will be approximately \$2.0 million in FY 1999 and approximately \$2.9

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million in FY 2000.

The estimated cost to counties will be approximately \$132,000 in FY 1999 and approximately \$168,000 in FY 2000.

The breakdown of the State General Fund estimate is as follows:

	<u>FY 1999</u>	<u>FY 2000</u>
<u>Trial Costs</u>		
Department of Justice -		
Commitment Hearings	\$ 269,000	\$ 269,000
Appeals	0	149,000
Reviews/Discharge Hearings	0	7,000
Total Dept. of Justice costs	<u>269,000</u>	<u>425,000</u>
Judicial Branch -		
Commitment Hearings	123,000	123,000
Appeals	0	42,000
Reviews/Discharge Hearings	0	10,000
Computer (one-time)	2,000	0
Special Allegation	190,000	190,000
Total Judicial Branch costs	<u>315,000</u>	<u>365,000</u>
Total Trial costs	584,000	790,000
<u>Housing/Review Costs</u>		
Dept. of Human Services -		
Salaries	502,000	725,000
Support	36,000	50,000
Rent, Equip., Maint.	474,000	378,000
Data Processing	86,000	8,000
Legal Fees	323,000	903,000
Total DHS-Housing/Review costs	<u>1,421,000</u>	<u>2,064,000</u>
Total State Cost	<u>\$ 2,005,000</u>	<u>\$ 2,854,000</u>

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
 Department of Corrections
 Department of Human Services
 Department of Justice
 Iowa Judicial Branch

(LSB 4351sv.2, MDF)

FILED MARCH 30, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2398
FISCAL NOTE

The estimate for Senate File 2398 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2398 deals with repeat sex offenders and lifetime hormonal intervention therapy.

Sections 1 and 2 provide for imposition of a life sentence for persons who commits repeat acts of sexual abuse against children age 12 and younger. Current law defines these offenses as Class B felonies. The Class B offense carries a 25-year sentence with a requirement that the offender serve 85.0% of the sentence before being eligible for parole.

Section 3 establishes a program for serious sex offenders to undergo treatment with medroxyprogesterone acetate or a similar substance as part of the conditions of release on probation, parole, or work release. The treatment may be required for first offenders and is mandatory for repeat offenders. The repeat offender may volunteer for surgical castration instead of the chemical treatment program. A serious sex offense is a sex offense committed against a child 12 years of age or younger. The included sex offenses are: first, second, and third degree sexual abuse; lascivious acts with a child; assault with intent to commit sexual abuse; indecent contact with a minor; lascivious conduct with a minor; sexual exploitation by a counselor; and sexual exploitation of a minor.

ASSUMPTIONS

1. In 1997, two offenders were admitted to prison under Section 901A, Code of Iowa (Sexually Predatory Offenses). Neither would have qualified for life sentences under this Bill.
2. In 1997, there were four offenders admitted to prison who could have been sentenced under Section 901A but were not. If they had been sentenced under this Bill, they could have qualified for life sentences.
3. There will be 176 probationers and 35 parolee sex offenders who are eligible for the program each year. The Department of Corrections cannot estimate how many probationers will be required to participate in the program. Calculations will be provided for all probationers to estimate the maximum costs for probationers. Parolees will not be released from prison during the five-year span of this projection.
4. The average age of an offender is 33 years. These individuals have an estimated 40 years of life remaining to serve under supervision and hormonal treatment.
5. The average weekly cost for treatment is \$72 per offender. Medication costs \$24 per week if purchased by the Department of Corrections. (The

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Department estimates medication costs will triple if the physicians provide the medication.) The office call for medication administration is \$40 per week. Laboratory costs for blood tests are \$40 per quarter. An annual psychiatric evaluation will be required by the Department and will cost \$275.

6. Probationers under lifetime supervision will be assigned to regular probation at a cost of \$1.47 per day.
7. Supervision and coordination costs of the program have not been included. The Community-Based-District Departments will experience increased workload and may need additional staffing.

CORRECTIONAL IMPACT

Repeat Sex Offenders: The changes in these Sections are not expected to affect the prison population given current sentencing practices. If sentencing patterns change as a result of this Bill, then the number of persons receiving life sentences could increase.

Hormonal Treatment: Information is not available to estimate the number of probationers who will be required to participate in hormonal treatment and lifetime supervision. No parolees will be released during the five-year period under examination. If all probationers were placed on lifetime supervision and hormonal treatment there would be an additional 405 probationers in FY 2003. If all probationers were required to participate in the program, at the end of the 40-year life expectancy of the first participants there would be approximately 6,700 additional persons on probation.

FISCAL IMPACT

Repeat Sex Offenders: Under current sentencing practices, this portion of the Bill is not expected to have a significant impact.

Hormonal Treatment: Information is not available to estimate what proportion of the probationers would be required to participate in the hormonal treatment program. Given the lifetime supervision, the costs of this program will increase over the next 40 years.

If all probationers were placed in the program (i.e., the maximum cost), the FY 1999 costs would be \$662,000. The FY 2000 costs would be \$1.3 million, and the FY 2003 costs would be \$3.8 million.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Department of Corrections

(LSB 4351SV, MDF)

FILED MARCH 5, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2398

S-5147

1 Amend Senate File 2398 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. NEW SECTION. 229A.1 LEGISLATIVE
5 FINDINGS.

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

27 The general assembly further finds that the
28 prognosis for rehabilitating sexually violent
29 predators in a prison setting is poor, because the
30 treatment needs of this population are very long-term,
31 and the treatment modalities for this population are
32 very different from the traditional treatment
33 modalities available in a prison setting or for
34 persons appropriate for commitment under chapter 229.
35 Therefore, the general assembly finds that a civil
36 commitment procedure for the long-term care and
37 treatment of the sexually violent predator is
38 necessary.

39 Sec. ____ NEW SECTION. 229A.2 DEFINITIONS.

40 As used in this chapter:

41 1. "Agency with jurisdiction" means an agency
42 which releases a person serving a sentence or term of
43 confinement based upon a lawful order or authority,
44 and includes but is not limited to the department of
45 corrections, the department of human services, a
46 judicial district department of correctional services,
47 and the Iowa board of parole.

48 2. "Mental abnormality" means a congenital or
49 acquired condition affecting the emotional or
50 volitional capacity of a person and predisposing that

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1 person to commit sexually violent offenses to a degree
2 which would constitute a menace to the health and
3 safety of others.

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

7 4. "Sexually motivated" means that one of the
8 purposes for commission of a crime is the purpose of
9 sexual gratification of the perpetrator of the crime.

10 5. "Sexually violent offense" means:

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

12 b. A violation of any of the following if the
13 offense involves sexual abuse, attempted sexual abuse,
14 or intent to commit sexual abuse:

15 (1) Murder as defined in section 707.1.

16 (2) Kidnapping as defined in section 710.1.

17 (3) Burglary as defined in section 713.1.

18 (4) Child endangerment under section 726.6,

19 subsection 1, paragraph "e".

20 c. Sexual exploitation of a minor in violation of
21 section 728.12, subsection 1.

22 d. Pandering involving a minor in violation of
23 section 725.3, subsection 2.

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

26 f. An offense under prior law of this state or an
27 offense committed in another jurisdiction which would
28 constitute an equivalent offense under paragraphs "a"
29 through "e".

30 g. Any act which, either at the time of sentencing
31 for the offense or subsequently during civil
32 commitment proceedings pursuant to this chapter, has
33 been determined beyond a reasonable doubt to have been
34 sexually motivated.

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

41 Sec. ____ . NEW SECTION. 229A.3 NOTICE OF
42 DISCHARGE OF SEXUALLY VIOLENT PREDATOR -- IMMUNITY
43 FROM LIABILITY -- MULTIDISCIPLINARY TEAM --
44 PROSECUTOR'S REVIEW COMMITTEE -- ASSESSMENT OF PERSON.

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

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1 a. The anticipated discharge of a person who has
2 been convicted of a sexually violent offense from
3 total confinement, except that in the case of a person
4 who is returned to prison for no more than ninety days
5 as a result of revocation of parole, written notice
6 shall be given as soon as practicable following the
7 person's readmission to prison.

8 b. The discharge of a person who has been charged
9 with a sexually violent offense and who has been
10 determined to be incompetent to stand trial pursuant
11 to chapter 812.

12 c. The discharge of a person who has been found
13 not guilty by reason of insanity of a sexually violent
14 offense.

15 d. The discharge of a person who has been found
16 not guilty of a sexually violent offense referred to
17 under section 229A.2, subsection 5, paragraph "b", or
18 of an attempt or conspiracy to commit an offense under
19 that paragraph, where the court or jury who found the
20 person not guilty answers the special allegation in
21 section 229A.14 in the affirmative.

22 2. If notice is required under subsection 1, the
23 agency with jurisdiction shall inform the attorney
24 general and the multidisciplinary team established in
25 subsection 4, of both of the following:

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

28 b. Documentation of any institutional evaluation
29 and any treatment received.

30 3. The agency with jurisdiction, its employees,
31 officials, members of the multidisciplinary team
32 established in subsection 4, members of the
33 prosecutor's review committee appointed as provided in
34 subsection 5, and individuals contracting, appointed,
35 or volunteering to perform services under this section
36 shall be immune from liability for any good-faith
37 conduct under this section.

38 4. The director of the department of corrections
39 shall establish a multidisciplinary team which may
40 include individuals from other state agencies to
41 review available records of each person referred to
42 such team pursuant to subsection 1. The team, within
43 thirty days of receiving notice, shall assess whether
44 or not the person meets the definition of a sexually
45 violent predator. The team shall notify the attorney
46 general of its assessment.

47 5. The attorney general shall appoint a
48 prosecutor's review committee to review the records of
49 each person referred to the attorney general pursuant
50 to subsection 1. The prosecutor's review committee

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1 shall assist the attorney general in the determination
2 of whether or not the person meets the definition of a
3 sexually violent predator. The assessment of the
4 multidisciplinary team shall be made available to the
5 attorney general and the prosecutor's review
6 committee.

7 Sec. ____ . NEW SECTION. 229A.4 PETITION, TIME,
8 CONTENTS.

9 If it appears that a person presently confined may
10 be a sexually violent predator and the prosecutor's
11 review committee has determined that the person meets
12 the definition of a sexually violent predator, the
13 attorney general may file a petition, within seventy-
14 five days of the date the attorney general received
15 the written notice by the agency of jurisdiction
16 pursuant to section 229A.3, alleging that the person
17 is a sexually violent predator and stating sufficient
18 facts to support such an allegation.

19 Sec. ____ . NEW SECTION. 229A.5 PERSON TAKEN INTO
20 CUSTODY, DETERMINATION OF PROBABLE CAUSE, HEARING,
21 EVALUATION.

22 1. Upon filing of a petition under section 229A.4,
23 the court shall make a preliminary determination as to
24 whether probable cause exists to believe that the
25 person named in the petition is a sexually violent
26 predator. Upon a preliminary finding of probable
27 cause, the court shall direct that the person named in
28 the petition be taken into custody and that the person
29 be served with a copy of the petition and any
30 supporting documentation and notice of the procedures
31 required by this chapter.

32 2. Within seventy-two hours after being taken into
33 custody, a hearing shall be held to determine whether
34 probable cause exists to believe the detained person
35 is a sexually violent predator. At the probable cause
36 hearing, the detained person shall have the following
37 rights:

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

40 b. To respond to the preliminary finding of
41 probable cause.

42 c. To appear in person at the hearing.

43 d. To be represented by counsel.

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

46 f. To cross-examine witnesses who testify against
47 the respondent.

48 g. To view and copy all petitions and reports in
49 the possession of the court.

50 3. At the hearing, the state may rely upon the

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1 petition filed under subsection 1 but may also
2 supplement the petition with additional documentary
3 evidence or live testimony.

4 4. At the conclusion of the hearing, the court
5 shall enter an order which does both of the following:

6 a. Verifies the respondent's identity.

7 b. Determines whether probable cause exists to
8 believe that the respondent is a sexually violent
9 predator.

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

18 Sec. ____ . NEW SECTION. 229A.6 COUNSEL AND
19 EXPERTS, INDIGENT PERSONS.

20 1. A respondent to a petition alleging the person
21 to be a sexually violent predator shall be entitled to
22 the assistance of counsel upon the filing of the
23 petition under section 299A.4 and, if the respondent
24 is indigent, the court shall appoint counsel to assist
25 the respondent.

26 2. If a respondent is subjected to an examination
27 under this chapter, the respondent may retain experts
28 or professional persons to perform an independent
29 examination on the respondent's behalf. If the
30 respondent wishes to be examined by a qualified expert
31 or professional person of the respondent's own choice,
32 the examiner of the respondent's choice shall be given
33 reasonable access to the respondent for the purpose of
34 the examination, as well as access to all relevant
35 medical and psychological records and reports. If the
36 respondent is indigent, the court, upon the
37 respondent's request, shall determine whether the
38 services are necessary and the reasonable compensation
39 for the services. If the court determines that the
40 services are necessary and the requested compensation
41 for the services is reasonable, the court shall assist
42 the respondent in obtaining an expert or professional
43 person to perform an examination or participate in the
44 trial on the respondent's behalf. The court shall
45 approve payment for such services upon the filing of a
46 certified claim for compensation supported by a
47 written statement specifying the time expended,
48 services rendered, expenses incurred on behalf of the
49 respondent, and compensation received in the same case
50 or for the same services from any other source.

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1 Sec. ____ . NEW SECTION. 229A.7 TRIAL,
2 DETERMINATION, COMMITMENT PROCEDURE, INTERAGENCY
3 AGREEMENTS, MISTRIALS.

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

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

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

33 3. The control, care, and treatment of a person
34 determined to be a sexually violent predator shall be
35 provided at a facility operated by the department of
36 human services. At all times, persons committed for
37 control, care, and treatment by the department of
38 human services pursuant to this chapter shall be kept
39 in a secure facility and those patients shall be
40 segregated at all times from any other patient under
41 the supervision of the department of human services.
42 A person committed pursuant to this chapter to the
43 custody of the department of human services may be
44 kept in a facility or building separate from any other
45 patient under the supervision of the department of
46 human services. The department of human services may
47 enter into an interagency agreement with the
48 department of corrections for the confinement of
49 patients who have been determined to be sexually
50 violent predators. Patients who are in the

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1 confinement of the director of the department of
2 corrections pursuant to an interagency agreement shall
3 be housed and managed separately from criminal
4 offenders in the custody of the director of the
5 department of corrections, and except for occasional
6 instances of supervised incidental contact, shall be
7 segregated from those offenders.

8 4. If the court or jury is not satisfied beyond a
9 reasonable doubt that the respondent is a sexually
10 violent predator, the court shall direct the
11 respondent's release. Upon a mistrial, the court
12 shall direct that the respondent be held at an
13 appropriate secure facility, including, but not
14 limited to, a county jail, until another trial is
15 conducted. Any subsequent trial following a mistrial
16 shall be held within ninety days of the previous
17 trial, unless such subsequent trial is continued as
18 provided in subsection 1.

19 5. If a person charged with a sexually violent
20 offense has been found incompetent to stand trial or
21 has been found not guilty of a sexually violent
22 offense by reason of insanity, and the person is about
23 to be discharged pursuant to section 812.5, if a
24 petition has been filed seeking the person's
25 commitment under this chapter, the court shall first
26 hear evidence and determine whether the person did
27 commit the act or acts charged. At the hearing on
28 this issue, the rules of evidence applicable in
29 criminal cases shall apply, and all constitutional
30 rights available to defendants at criminal trials,
31 other than the right not to be tried while
32 incompetent, shall apply. After hearing evidence on
33 this issue, the court shall make specific findings on
34 whether the person did commit the act or acts charged,
35 the extent to which the person's incompetence or
36 insanity affected the outcome of the hearing,
37 including its effect on the person's ability to
38 consult with and assist counsel and to testify on the
39 person's own behalf, the extent to which the evidence
40 could be reconstructed without the assistance of the
41 person, and the strength of the prosecution's case.
42 If after the conclusion of the hearing on this issue,
43 the court finds, beyond a reasonable doubt, that the
44 person did commit the act or acts charged, the court
45 shall enter a final order, appealable by the person,
46 on that issue, and may proceed to consider whether the
47 person should be committed pursuant to this chapter.

48 Sec. ____ . NEW SECTION. 229A.8 ANNUAL
49 EXAMINATIONS, DISCHARGE PETITIONS BY PERSONS
50 COMMITTED.

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1 1. Each person committed under this chapter shall
2 have a current examination of the person's mental
3 abnormality made once every year. The person may
4 retain, or if the person is indigent and so requests,
5 the court may appoint a qualified expert or
6 professional person to examine such person, and such
7 expert or professional person shall be given access to
8 all records concerning the person.

9 2. The annual report shall be provided to the
10 court that committed the person under this chapter.
11 The court shall conduct an annual review and probable
12 cause hearing on the status of the committed person.

13 3. Nothing contained in this chapter shall
14 prohibit the person from otherwise petitioning the
15 court for discharge at the probable cause hearing.
16 The director of human services shall provide the
17 committed person with an annual written notice of the
18 person's right to petition the court for discharge
19 over the director's objection. The notice shall
20 contain a waiver of rights. The director shall
21 forward the notice and waiver form to the court with
22 the annual report.

23 4. The committed person shall have a right to have
24 an attorney represent the person at the probable cause
25 hearing but the person is not entitled to be present
26 at the hearing. If the court at the hearing
27 determines that probable cause exists to believe that
28 the person's mental abnormality has so changed that
29 the person is safe to be at large and will not engage
30 in predatory acts or sexually violent offenses if
31 discharged, then the court shall set a final hearing
32 on the issue.

33 5. At the final hearing, the committed person
34 shall be entitled to be present and is entitled to the
35 benefit of all constitutional protections that were
36 afforded the person at the original commitment
37 proceeding. The attorney general shall represent the
38 state and shall have a right to a jury trial and to
39 have the committed person evaluated by experts chosen
40 by the state. The committed person shall also have
41 the right to have experts evaluate the person on the
42 person's behalf. The court shall appoint an expert if
43 the person is indigent and requests an appointment.
44 The burden of proof at the hearing shall be upon the
45 state to prove beyond a reasonable doubt that the
46 committed person's mental abnormality or personality
47 disorder remains such that the person is not safe to
48 be at large and if discharged is likely to engage in
49 acts of sexual violence.

50 Sec. ____ . NEW SECTION. 229A.9 DETENTION AND
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1 COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

2 The involuntary detention or commitment of persons
3 under this chapter shall conform to constitutional
4 requirements for care and treatment.

5 Sec. ____ . NEW SECTION. 229A.10 PETITION FOR
6 DISCHARGE -- PROCEDURE.

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

27 Sec. ____ . NEW SECTION. 229A.11 SUBSEQUENT
28 DISCHARGE PETITIONS, LIMITATIONS.

29 Nothing in this chapter shall prohibit a person
30 from filing a petition for discharge pursuant to this
31 chapter. However, if a person has previously filed a
32 petition for discharge without the authorization of
33 the director of human services, and the court
34 determines either upon review of the petition or
35 following a hearing that the petition was frivolous or
36 that the petitioner's condition had not so changed
37 that the person was safe to be at large, then the
38 court shall summarily deny the subsequent petition
39 unless the petition contains facts upon which a court
40 could find the condition of the petitioner had so
41 changed that a hearing was warranted. Upon receipt of
42 a first or subsequent petition from a committed person
43 without the director's authorization, the court shall
44 endeavor whenever possible to review the petition and
45 determine if the petition is based upon frivolous
46 grounds. If the court determines that a petition is
47 frivolous, the court shall deny the petition without a
48 hearing.

49 Sec. ____ . NEW SECTION. 229A.12 DIRECTOR OF HUMAN
50 SERVICES -- RESPONSIBILITY FOR COSTS -- DUTIES --

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1 REIMBURSEMENT.

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

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

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

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

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

37 2. In a criminal case in which a special
38 allegation of sexual motivation has been filed, the
39 state shall prove beyond a reasonable doubt that the
40 crime was sexually motivated. The court shall make a
41 finding of fact of whether or not a sexual motivation
42 was present at the time of the commission of the
43 crime, or if a jury trial is had, the jury shall
44 return a special verdict as to whether or not the
45 crime was sexually motivated.

46 3. The county attorney shall not withdraw the
47 special allegation of sexual motivation without
48 approval of the court through an order of dismissal of
49 the special allegation. The court shall not dismiss
50 the special allegation unless it finds that such an

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1 order is necessary to correct an error in the initial
 2 charging decision or unless evidentiary problems exist
 3 which make proving the special allegation doubtful.
 4 4. This section shall not apply to criminal cases
 5 alleging a violation of chapter 709 or a case in which
 6 the commission of a sex act is an element of the
 7 offense charged.

8 Sec. ____ . NEW SECTION. 229A.15 SEVERABILITY.

9 If any provision of this chapter or the application
 10 thereof to any person or circumstances is held
 11 invalid, the invalidity shall not affect other
 12 provisions or applications of the chapter which can be
 13 given effect without the invalid provisions or
 14 application and, to this end, the provisions of this
 15 chapter are severable.

16 Sec. ____ . NEW SECTION. 229A.16 RELEASE OF
 17 CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

18 Notwithstanding anything in chapter 22 to the
 19 contrary, relevant information and records which would
 20 otherwise be confidential or privileged shall be
 21 released to the agency with jurisdiction or the
 22 attorney general for the purpose of meeting the notice
 23 requirement provided in section 229A.3 and determining
 24 whether a person is or continues to be a sexually
 25 violent predator.

26 Sec. ____ . NEW SECTION. 229A.17 COURT RECORDS --
 27 SEALED AND OPENED BY COURT ORDER.

28 Any psychological reports, drug and alcohol
 29 reports, treatment records, reports of any diagnostic
 30 center, medical records, or victim impact statements
 31 which have been submitted to the court or admitted
 32 into evidence under this chapter shall be part of the
 33 record but shall be sealed and opened only on order of
 34 the court.

35 Sec. ____ . NEW SECTION. 299A.18 SHORT TITLE.

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

38 2. By renumbering as necessary.

By ROBERT E. DVORSKY

S-5147 FILED MARCH 4, 1998

lost 3/5/98 (p. 586)

SENATE FILE 2398

S-5145

1 Amend Senate File 2398 as follows:

2 1. Page 4, line 15, by inserting after the word
 3 "rehabilitate" the following: "juvenile and adult".

adopted 3/5/98 (p. 587) By ROBERT E. DVORSKY

S-5145 FILED MARCH 4, 1998

SENATE FILE 2398

S-5154

1 Amend Senate File 2398 as follows:
2 1. Page 4, by inserting after line 9 the
3 following:
4 "6. A person who is required to undergo
5 medroxyprogesterone acetate treatment, or treatment
6 utilizing another approved pharmaceutical agent,
7 pursuant to this section, shall be required to pay a
8 reasonable fee to pay for the costs of providing the
9 treatment. A requirement that a person pay a fee
10 shall include provision for reduction, deferral, or
11 waiver of payment if the person is financially unable
12 to pay the fee."

By JEFF ANGELO
ANDY MCKEAN

S-5154 FILED MARCH 5, 1998
ADOPTED

(p. 587)

SENATE FILE 2398

S-5148

1 Amend Senate File 2398, as follows:

2 1. Page 2, by striking lines 23 through 25, and
3 inserting the following: "that the person receive a
4 special sentence committing the person into the
5 custody of the director of the Iowa department of
6 corrections for the rest of the person's life, with
7 eligibility for parole as provided in chapter 906.
8 The special sentence imposed under this subsection
9 shall commence upon".

10 2. By striking page 2, line 32, through page 3,
11 line 1, and inserting the following: "rehabilitation
12 of the person. Notwithstanding section 906.15, a
13 person receiving an additional special sentence
14 pursuant to this subsection shall not be discharged
15 from parole."

By JEFF ANGELO

S-5148 FILED MARCH 5, 1998

ADOPTED

p. 587

SENATE FILE 2398

S-5149

1 Amend Senate File 2398 as follows:

2 1. Page 2, line 8, by inserting after the word
3 "acetate" the following: "or other approved
4 pharmaceutical agent".

5 2. Page 3, line 25, by inserting after the word
6 "acetate" the following: "or other approved
7 pharmaceutical agent".

8 3. Page 3, line 34, by inserting after the word
9 "acetate" the following: "or other approved
10 pharmaceutical agent".

11 4. Page 4, line 4, by inserting after the word
12 "acetate" the following: "or other approved
13 pharmaceutical agent".

By JEFF ANGELO

S-5149 FILED MARCH 5, 1998

ADOPTED

(p. 587)

1 Section 1. Section 901A.2, subsections 3 and 4, Code 1997,
2 are amended to read as follows:

3 3. A Except as otherwise provided in subsection 4A, a
4 person convicted of a sexually predatory offense which is a
5 felony, who has a prior conviction for a sexually predatory
6 offense, shall be sentenced to and shall serve twice the
7 maximum period of incarceration for the offense, or twenty-
8 five years, whichever is greater, notwithstanding any other
9 provision of the Code to the contrary. A person sentenced
10 under this subsection shall not have the person's sentence
11 reduced under chapter 903A or otherwise by more than fifteen
12 percent.

13 4. A Except as otherwise provided in subsection 4A, a
14 person convicted of a sexually predatory offense which is a
15 felony who has previously been sentenced under subsection 3
16 shall be sentenced to life in prison on the same terms as a
17 class "A" felon under section 902.1, notwithstanding any other
18 provision of the Code to the contrary. In order for a person
19 to be sentenced under this subsection, the prosecuting
20 attorney shall allege and prove that this section is
21 applicable to the person.

22 Sec. 2. Section 901A.2, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 4A. A person who has been convicted of a
25 violation of section 709.3, subsection 2, shall, upon a second
26 conviction for a violation of section 709.3, subsection 2, be
27 committed to the custody of the director of the Iowa
28 department of corrections for the rest of the person's life.
29 In determining whether a conviction is a first or second
30 conviction under this subsection, a prior conviction for a
31 criminal offense committed in another jurisdiction which would
32 constitute a violation of section 709.3, subsection 2, if
33 committed in this state, shall be considered a conviction
34 under this subsection. The terms and conditions applicable to
35 sentences for class "A" felons under chapters 901 through 909

1 shall apply to persons sentenced under this subsection.

2 Sec. 3. NEW SECTION. 903B.1 HORMONAL INTERVENTION
3 THERAPY -- CERTAIN SEX OFFENSES.

4 1. A person who has been convicted of a serious sex
5 offense may, upon a first conviction and in addition to any
6 other punishment provided by law, be required to undergo
7 medroxyprogesterone acetate treatment as part of any
8 conditions of release imposed by the court or the board of
9 parole. The treatment prescribed in this section may utilize
10 an approved pharmaceutical agent other than
11 medroxyprogesterone acetate. Upon a second or subsequent
12 conviction, the court or the board of parole shall require the
13 person to undergo medroxyprogesterone acetate or other
14 approved pharmaceutical agent treatment as a condition of
15 release. In determining whether a conviction is a first or
16 second conviction under this section, a prior conviction for a
17 criminal offense committed in another jurisdiction which would
18 constitute a violation of section 709.3, subsection 2, if
19 committed in this state, shall be considered a conviction
20 under this section. This section shall not apply if the
21 person voluntarily undergoes a permanent surgical alternative
22 approved by the court or the board of parole.

23 2. If a person is placed on probation and is not in
24 confinement at the time of sentencing, the presentence
25 investigation shall include a plan for initiation of treatment
26 as soon as is reasonably possible after the person is
27 sentenced. If the person is in confinement prior to release
28 on probation or parole, treatment shall commence prior to the
29 release of the person from confinement. Conviction of a
30 serious sex offense shall constitute exceptional circumstances
31 warranting a presentence investigation under section 901.2.

32 3. If the serious sex offense is a felony, the court may
33 include, in addition to any other punishment provided by law,
34 that the person receive a special sentence committing the
35 person into the custody of the director of the Iowa department

1 of corrections for the rest of the person's life, with
2 eligibility for parole as provided in chapter 906. The
3 special sentence imposed under this subsection shall commence
4 upon completion of the sentence imposed under any applicable
5 criminal sentencing provisions for the underlying serious sex
6 offense and shall be supervised as if on parole, shall include
7 the same treatment terms and conditions as required in
8 subsection 1, and may include any other terms and conditions
9 deemed appropriate to protect the public and promote the
10 rehabilitation of the person. Notwithstanding section 906.15,
11 a person receiving an additional special sentence pursuant to
12 this subsection shall not be discharged from parole.

13 4. For purposes of this section, a "serious sex offense"
14 means any of the following offenses in which the victim was a
15 child who was, at the time the offense was committed, twelve
16 years of age or younger:

17 a. Sexual abuse in the first degree, in violation of
18 section 709.2.

19 b. Sexual abuse in the second degree, in violation of
20 section 709.3.

21 c. Sexual abuse in the third degree, in violation of
22 section 709.4.

23 d. Lascivious acts with a child, in violation of section
24 709.8.

25 e. Assault with intent, in violation of section 709.11.

26 f. Indecent contact with a minor, in violation of section
27 709.12.

28 g. Lascivious conduct with a minor, in violation of
29 section 709.14.

30 h. Sexual exploitation by a counselor in violation of
31 section 709.15.

32 i. Sexual exploitation of a minor, in violation of section
33 728.12, subsections 1 and 2.

34 5. The department of corrections, in consultation with the
35 board of parole, shall adopt rules which provide for the

1 initiation of medroxyprogesterone acetate or other approved
2 pharmaceutical agent treatment prior to the parole or work
3 release of a person who has been convicted of a serious sex
4 offense and who is required to undergo treatment as a
5 condition of release by the board of parole. The department's
6 rules shall also establish standards for the supervision of
7 the treatment by the judicial district department of
8 correctional services during the period of release. Each
9 district department of correctional services shall adopt
10 policies and procedures which provide for the initiation or
11 continuation of medroxyprogesterone acetate or other approved
12 pharmaceutical agent treatment as a condition of release for
13 each person who is required to undergo the treatment by the
14 court or the board of parole. The board of parole shall, in
15 consultation with the department of corrections, adopt rules
16 which relate to initiation or continuation of
17 medroxyprogesterone acetate or other approved pharmaceutical
18 agent treatment as a condition of any parole or work release.
19 Any rules, standards, and policies and procedures adopted
20 shall provide for the continuation of the treatment until the
21 agency in charge of supervising the treatment determines that
22 the treatment is no longer necessary.

23 6. A person who is required to undergo medroxyprogesterone
24 acetate treatment, or treatment utilizing another approved
25 pharmaceutical agent, pursuant to this section, shall be
26 required to pay a reasonable fee to pay for the costs of
27 providing the treatment. A requirement that a person pay a
28 fee shall include provision for reduction, deferral, or waiver
29 of payment if the person is financially unable to pay the fee.

30 Sec. 4. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE.
31 The legislative council is requested to authorize an interim
32 study committee to issue a report to the general assembly
33 which convenes in 1999, concerning the treatments available
34 and used in the United States and other countries to
35 rehabilitate juvenile and adult sex offenders and deter those

1 persons from engaging in criminal sexual acts or activities in
2 the future.

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SENATE FILE 2398

H-8542

1 Amend Senate File 2398, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. NEW SECTION. 229A.1 LEGISLATIVE
6 FINDINGS.

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

28 The general assembly further finds that the
29 prognosis for rehabilitating sexually violent
30 predators in a prison setting is poor, because the
31 treatment needs of this population are very long-term,
32 and the treatment modalities for this population are
33 very different from the traditional treatment
34 modalities available in a prison setting or for
35 persons appropriate for commitment under chapter 229.
36 Therefore, the general assembly finds that a civil
37 commitment procedure for the long-term care and
38 treatment of the sexually violent predator is
39 necessary.

40 Sec. ____ . NEW SECTION. 229A.2 DEFINITIONS.

41 As used in this chapter:

42 1. "Agency with jurisdiction" means an agency
43 which releases a person serving a sentence or term of
44 confinement based upon a lawful order or authority,
45 and includes but is not limited to the department of
46 corrections, the department of human services, a
47 judicial district department of correctional services,
48 and the Iowa board of parole.

49 2. "Mental abnormality" means a congenital or
50 acquired condition affecting the emotional or

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1 volitional capacity of a person and predisposing that
2 person to commit sexually violent offenses to a degree
3 which would constitute a menace to the health and
4 safety of others.

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

8 4. "Sexually motivated" means that one of the
9 purposes for commission of a crime is the purpose of
10 sexual gratification of the perpetrator of the crime.

11 5. "Sexually violent offense" means:

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

13 b. A violation of any of the following if the
14 offense involves sexual abuse, attempted sexual abuse,
15 or intent to commit sexual abuse:

16 (1) Murder as defined in section 707.1.

17 (2) Kidnapping as defined in section 710.1.

18 (3) Burglary as defined in section 713.1.

19 (4) Child endangerment under section 726.6,
20 subsection 1, paragraph "e".

21 c. Sexual exploitation of a minor in violation of
22 section 728.12, subsection 1.

23 d. Pandering involving a minor in violation of
24 section 725.3, subsection 2.

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

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

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

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

42 Sec. ____ . NEW SECTION. 229A.3 NOTICE OF
43 DISCHARGE OF SEXUALLY VIOLENT PREDATOR -- IMMUNITY
44 FROM LIABILITY -- MULTIDISCIPLINARY TEAM --
45 PROSECUTOR'S REVIEW COMMITTEE -- ASSESSMENT OF PERSON.

46 1. When it appears that a person may meet the
47 definition of a sexually violent predator, the agency
48 with jurisdiction shall give written notice to the
49 attorney general and the multidisciplinary team
50 established in subsection 4, no later than ninety days

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1 prior to any of the following events:

2 a. The anticipated discharge of a person who has
3 been convicted of a sexually violent offense from
4 total confinement, except that in the case of a person
5 who is returned to prison for no more than ninety days
6 as a result of revocation of parole, written notice
7 shall be given as soon as practicable following the
8 person's readmission to prison.

9 b. The discharge of a person who has been charged
10 with a sexually violent offense and who has been
11 determined to be incompetent to stand trial pursuant
12 to chapter 812.

13 c. The discharge of a person who has been found
14 not guilty by reason of insanity of a sexually violent
15 offense.

16 d. The discharge of a person who has been found
17 not guilty of a sexually violent offense referred to
18 under section 229A.2, subsection 5, paragraph "b", or
19 of an attempt or conspiracy to commit an offense under
20 that paragraph, where the court or jury who found the
21 person not guilty answers the special allegation in
22 section 229A.14 in the affirmative.

23 2. If notice is required under subsection 1, the
24 agency with jurisdiction shall inform the attorney
25 general and the multidisciplinary team established in
26 subsection 4, of both of the following:

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

29 b. Documentation of any institutional evaluation
30 and any treatment received.

31 3. The agency with jurisdiction, its employees,
32 officials, members of the multidisciplinary team
33 established in subsection 4, members of the
34 prosecutor's review committee appointed as provided in
35 subsection 5, and individuals contracting, appointed,
36 or volunteering to perform services under this section
37 shall be immune from liability for any good-faith
38 conduct under this section.

39 4. The director of the department of corrections
40 shall establish a multidisciplinary team which may
41 include individuals from other state agencies to
42 review available records of each person referred to
43 such team pursuant to subsection 1. The team, within
44 thirty days of receiving notice, shall assess whether
45 or not the person meets the definition of a sexually
46 violent predator. The team shall notify the attorney
47 general of its assessment.

48 5. The attorney general shall appoint a
49 prosecutor's review committee to review the records of
50 each person referred to the attorney general pursuant

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1 to subsection 1. The prosecutor's review committee
2 shall assist the attorney general in the determination
3 of whether or not the person meets the definition of a
4 sexually violent predator. The assessment of the
5 multidisciplinary team shall be made available to the
6 attorney general and the prosecutor's review
7 committee.

8 Sec. _____. NEW SECTION. 229A.4 PETITION, TIME,
9 CONTENTS.

10 If it appears that a person presently confined may
11 be a sexually violent predator and the prosecutor's
12 review committee has determined that the person meets
13 the definition of a sexually violent predator, the
14 attorney general may file a petition, within seventy-
15 five days of the date the attorney general received
16 the written notice by the agency of jurisdiction
17 pursuant to section 229A.3, alleging that the person
18 is a sexually violent predator and stating sufficient
19 facts to support such an allegation.

20 Sec. _____. NEW SECTION. 229A.5 PERSON TAKEN INTO
21 CUSTODY, DETERMINATION OF PROBABLE CAUSE, HEARING,
22 EVALUATION.

23 1. Upon filing of a petition under section 229A.4,
24 the court shall make a preliminary determination as to
25 whether probable cause exists to believe that the
26 person named in the petition is a sexually violent
27 predator. Upon a preliminary finding of probable
28 cause, the court shall direct that the person named in
29 the petition be taken into custody and that the person
30 be served with a copy of the petition and any
31 supporting documentation and notice of the procedures
32 required by this chapter.

33 2. Within seventy-two hours after being taken into
34 custody, a hearing shall be held to determine whether
35 probable cause exists to believe the detained person
36 is a sexually violent predator. At the probable cause
37 hearing, the detained person shall have the following
38 rights:

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

41 b. To respond to the preliminary finding of
42 probable cause.

43 c. To appear in person at the hearing.

44 d. To be represented by counsel.

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

47 f. To cross-examine witnesses who testify against
48 the respondent.

49 g. To view and copy all petitions and reports in
50 the possession of the court.

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

5 4. At the conclusion of the hearing, the court
6 shall enter an order which does both of the following:

7 a. Verifies the respondent's identity.

8 b. Determines whether probable cause exists to
9 believe that the respondent is a sexually violent
10 predator.

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

19 Sec. ____ . NEW SECTION. 229A.6 COUNSEL AND
20 EXPERTS, INDIGENT PERSONS.

21 1. A respondent to a petition alleging the person
22 to be a sexually violent predator shall be entitled to
23 the assistance of counsel upon the filing of the
24 petition under section 299A.4 and, if the respondent
25 is indigent, the court shall appoint counsel to assist
26 the respondent.

27 2. If a respondent is subjected to an examination
28 under this chapter, the respondent may retain experts
29 or professional persons to perform an independent
30 examination on the respondent's behalf. If the
31 respondent wishes to be examined by a qualified expert
32 or professional person of the respondent's own choice,
33 the examiner of the respondent's choice shall be given
34 reasonable access to the respondent for the purpose of
35 the examination, as well as access to all relevant
36 medical and psychological records and reports. If the
37 respondent is indigent, the court, upon the
38 respondent's request, shall determine whether the
39 services are necessary and the reasonable compensation
40 for the services. If the court determines that the
41 services are necessary and the requested compensation
42 for the services is reasonable, the court shall assist
43 the respondent in obtaining an expert or professional
44 person to perform an examination or participate in the
45 trial on the respondent's behalf. The court shall
46 approve payment for such services upon the filing of a
47 certified claim for compensation supported by a
48 written statement specifying the time expended,
49 services rendered, expenses incurred on behalf of the
50 respondent, and compensation received in the same case

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1 or for the same services from any other source.

2 Sec. ____ . NEW SECTION. 229A.7 TRIAL,
3 DETERMINATION, COMMITMENT PROCEDURE, INTERAGENCY
4 AGREEMENTS, MISTRIALS.

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

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

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

34 3. The control, care, and treatment of a person
35 determined to be a sexually violent predator shall be
36 provided at a facility operated by the department of
37 human services. At all times, persons committed for
38 control, care, and treatment by the department of
39 human services pursuant to this chapter shall be kept
40 in a secure facility and those patients shall be
41 segregated at all times from any other patient under
42 the supervision of the department of human services.
43 A person committed pursuant to this chapter to the
44 custody of the department of human services may be
45 kept in a facility or building separate from any other
46 patient under the supervision of the department of
47 human services. The department of human services may
48 enter into an interagency agreement with the
49 department of corrections for the confinement of
50 patients who have been determined to be sexually

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1 violent predators. Patients who are in the
2 confinement of the director of the department of
3 corrections pursuant to an interagency agreement shall
4 be housed and managed separately from criminal
5 offenders in the custody of the director of the
6 department of corrections, and except for occasional
7 instances of supervised incidental contact, shall be
8 segregated from those offenders.

9 4. If the court or jury is not satisfied beyond a
10 reasonable doubt that the respondent is a sexually
11 violent predator, the court shall direct the
12 respondent's release. Upon a mistrial, the court
13 shall direct that the respondent be held at an
14 appropriate secure facility, including, but not
15 limited to, a county jail, until another trial is
16 conducted. Any subsequent trial following a mistrial
17 shall be held within ninety days of the previous
18 trial, unless such subsequent trial is continued as
19 provided in subsection 1.

20 5. If a person charged with a sexually violent
21 offense has been found incompetent to stand trial or
22 has been found not guilty of a sexually violent
23 offense by reason of insanity, and the person is about
24 to be discharged pursuant to section 812.5, if a
25 petition has been filed seeking the person's
26 commitment under this chapter, the court shall first
27 hear evidence and determine whether the person did
28 commit the act or acts charged. At the hearing on
29 this issue, the rules of evidence applicable in
30 criminal cases shall apply, and all constitutional
31 rights available to defendants at criminal trials,
32 other than the right not to be tried while
33 incompetent, shall apply. After hearing evidence on
34 this issue, the court shall make specific findings on
35 whether the person did commit the act or acts charged,
36 the extent to which the person's incompetence or
37 insanity affected the outcome of the hearing,
38 including its effect on the person's ability to
39 consult with and assist counsel and to testify on the
40 person's own behalf, the extent to which the evidence
41 could be reconstructed without the assistance of the
42 person, and the strength of the prosecution's case.
43 If after the conclusion of the hearing on this issue,
44 the court finds, beyond a reasonable doubt, that the
45 person did commit the act or acts charged, the court
46 shall enter a final order, appealable by the person,
47 on that issue, and may proceed to consider whether the
48 person should be committed pursuant to this chapter.

49 Sec. ____ . NEW SECTION. 229A.8 ANNUAL
50 EXAMINATIONS, DISCHARGE PETITIONS BY PERSONS

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1 COMMITTED.

2 1. Each person committed under this chapter shall
3 have a current examination of the person's mental
4 abnormality made once every year. The person may
5 retain, or if the person is indigent and so requests,
6 the court may appoint a qualified expert or
7 professional person to examine such person, and such
8 expert or professional person shall be given access to
9 all records concerning the person.

10 2. The annual report shall be provided to the
11 court that committed the person under this chapter.
12 The court shall conduct an annual review and probable
13 cause hearing on the status of the committed person.

14 3. Nothing contained in this chapter shall
15 prohibit the person from otherwise petitioning the
16 court for discharge at the probable cause hearing.
17 The director of human services shall provide the
18 committed person with an annual written notice of the
19 person's right to petition the court for discharge
20 over the director's objection. The notice shall
21 contain a waiver of rights. The director shall
22 forward the notice and waiver form to the court with
23 the annual report.

24 4. The committed person shall have a right to have
25 an attorney represent the person at the probable cause
26 hearing but the person is not entitled to be present
27 at the hearing. If the court at the hearing
28 determines that probable cause exists to believe that
29 the person's mental abnormality has so changed that
30 the person is safe to be at large and will not engage
31 in predatory acts or sexually violent offenses if
32 discharged, then the court shall set a final hearing
33 on the issue.

34 5. At the final hearing, the committed person
35 shall be entitled to be present and is entitled to the
36 benefit of all constitutional protections that were
37 afforded the person at the original commitment
38 proceeding. The attorney general shall represent the
39 state and shall have a right to a jury trial and to
40 have the committed person evaluated by experts chosen
41 by the state. The committed person shall also have
42 the right to have experts evaluate the person on the
43 person's behalf. The court shall appoint an expert if
44 the person is indigent and requests an appointment.
45 The burden of proof at the hearing shall be upon the
46 state to prove beyond a reasonable doubt that the
47 committed person's mental abnormality or personality
48 disorder remains such that the person is not safe to
49 be at large and if discharged is likely to engage in
50 acts of sexual violence.

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1 Sec. ____ . NEW SECTION. 229A.9 DETENTION AND
2 COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

3 The involuntary detention or commitment of persons
4 under this chapter shall conform to constitutional
5 requirements for care and treatment.

6 Sec. ____ . NEW SECTION. 229A.10 PETITION FOR
7 DISCHARGE -- PROCEDURE.

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

28 Sec. ____ . NEW SECTION. 229A.11 SUBSEQUENT
29 DISCHARGE PETITIONS, LIMITATIONS.

30 Nothing in this chapter shall prohibit a person
31 from filing a petition for discharge pursuant to this
32 chapter. However, if a person has previously filed a
33 petition for discharge without the authorization of
34 the director of human services, and the court
35 determines either upon review of the petition or
36 following a hearing that the petition was frivolous or
37 that the petitioner's condition had not so changed
38 that the person was safe to be at large, then the
39 court shall summarily deny the subsequent petition
40 unless the petition contains facts upon which a court
41 could find the condition of the petitioner had so
42 changed that a hearing was warranted. Upon receipt of
43 a first or subsequent petition from a committed person
44 without the director's authorization, the court shall
45 endeavor whenever possible to review the petition and
46 determine if the petition is based upon frivolous
47 grounds. If the court determines that a petition is
48 frivolous, the court shall deny the petition without a
49 hearing.

50 Sec. ____ . NEW SECTION. 229A.12 DIRECTOR OF HUMAN

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1 SERVICES -- RESPONSIBILITY FOR COSTS -- DUTIES --
2 REIMBURSEMENT.

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

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

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

27 Sec. ____ . NEW SECTION. 229A.14 SPECIAL
28 ALLEGATION OF SEXUAL MOTIVATION -- PROCEDURE --
29 WITHDRAWAL OR DISMISSAL.

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

38 2. In a criminal case in which a special
39 allegation of sexual motivation has been filed, the
40 state shall prove beyond a reasonable doubt that the
41 crime was sexually motivated. The court shall make a
42 finding of fact of whether or not a sexual motivation
43 was present at the time of the commission of the
44 crime, or if a jury trial is had, the jury shall
45 return a special verdict as to whether or not the
46 crime was sexually motivated.

47 3. The county attorney shall not withdraw the
48 special allegation of sexual motivation without
49 approval of the court through an order of dismissal of
50 the special allegation. The court shall not dismiss

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1 the special allegation unless it finds that such an
2 order is necessary to correct an error in the initial
3 charging decision or unless evidentiary problems exist
4 which make proving the special allegation doubtful.
5 4. This section shall not apply to criminal cases
6 alleging a violation of chapter 709 or a case in which
7 the commission of a sex act is an element of the
8 offense charged.

9 Sec. ____ . NEW SECTION. 229A.15 SEVERABILITY.

10 If any provision of this chapter or the application
11 thereof to any person or circumstances is held
12 invalid, the invalidity shall not affect other
13 provisions or applications of the chapter which can be
14 given effect without the invalid provisions or
15 application and, to this end, the provisions of this
16 chapter are severable.

17 Sec. ____ . NEW SECTION. 229A.16 RELEASE OF

18 CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

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

27 Sec. ____ . NEW SECTION. 229A.17 COURT RECORDS --

28 SEALED AND OPENED BY COURT ORDER.

29 Any psychological reports, drug and alcohol
30 reports, treatment records, reports of any diagnostic
31 center, medical records, or victim impact statements
32 which have been submitted to the court or admitted
33 into evidence under this chapter shall be part of the
34 record but shall be sealed and opened only on order of
35 the court.

36 Sec. ____ . NEW SECTION. 299A.18 SHORT TITLE.

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

39 2. By renumbering as necessary.

By COMMITTEE ON JUDICIARY

LAMBERTI of Polk, Chairperson

H-8542 FILED MARCH 23, 1998

Adopted 4/14/98

(p. 1585)

SENATE FILE 2398

H-8612

1 Amend the amendment, H-8542, to Senate File 2398,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 5, by striking lines 17 and 18, and
5 inserting the following: "by an individual who at
6 least meets the clinical standards for professional
7 competence adopted in the third international congress
8 on the treatment of sex offenders and is experienced
9 in working with the assessment of sex offenders."

10 2. Page 6, line 37, by inserting after the word
11 "services." the following: "Facility staff
12 responsible for providing treatment services to
13 persons determined to be sexually violent predators
14 shall include one or more individuals who at least
15 meet the clinical standards for professional
16 competence adopted in the third international congress
17 on the treatment of sex offenders and are experienced
18 in treating sex offenders."

19 3. Page 8, line 9, by inserting after the word
20 "person." the following: "A person conducting an
21 annual examination shall at least meet the clinical
22 standards for professional competence adopted in the
23 third international congress on the treatment of sex
24 offenders and be experienced in working with the
25 examination and treatment of sex offenders."

By JOCHUM of Dubuque

H-8612 FILED MARCH 24, 1998

W/D
4-14-98
(P. 1585)

SENATE FILE 2398

H-9129

1 Amend Senate File 2398, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 2, line 4 through page 2,
4 line 31, and inserting the following:

5 "1. If a person is convicted of a serious sex
6 offense, the court shall, prior to the time of
7 sentencing, order that the person undergo an
8 assessment to determine whether the person's emotional
9 or volitional capacity predisposes the person to
10 commit criminal sexual acts, whether the person is at
11 risk of committing additional criminal sexual acts
12 upon release, and whether any treatment may be
13 available which will reduce or eliminate the
14 likelihood that the person will again engage in
15 criminal sexual acts. The assessment shall be
16 conducted by a person who possesses the professional
17 qualifications specified in rules adopted by the
18 department of corrections in consultation with the
19 department of human services and the division of
20 criminal and juvenile justice planning of the
21 department of human rights. The assessment shall be
22 completed and provided to the court at least three
23 days prior to the time of sentencing. The assessment
24 shall be subject to the same confidentiality
25 requirements and shall be distributed in the same
26 manner as a presentence investigation under section
27 901.4.

28 2. At the time of sentencing, the court may order
29 that the person undergo any treatment recommended in
30 the assessment, and may require that the person
31 undergo medroxyprogesterone acetate treatment or some
32 equally or more effective treatment. If
33 medroxyprogesterone acetate treatment or some equally
34 or more effective treatment is ordered, the court's
35 order shall specify the time within which treatment
36 shall be initiated and the length of time and
37 conditions under which treatment shall be conducted.

38 3. The court shall not order medroxyprogesterone
39 acetate treatment or some equally or more effective
40 treatment if the person voluntarily undergoes a
41 permanent surgical alternative approved by the court.
42 If the person is required to undergo
43 medroxyprogesterone acetate treatment or some equally
44 or more effective treatment, the person shall be
45 informed by qualified personnel regarding the nature
46 and purposes of the treatment, together with the known
47 risks and any long-term complications or damage which
48 may be associated with the treatment, and the
49 probability of each such risk if reasonably
50 determinable."

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- 1 2. Page 3, line 8, by striking the figure "1" and
- 2 inserting the following: "2".
- 3 3. By striking page 3, line 34, through page 4,
- 4 line 29.
- 5 4. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-9129 FILED APRIL 13, 1998

W/D 4/14/98 (p.1585)

SENATE FILE 2398

H-9130

- 1 Amend Senate File 2398, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, by striking lines 2 through 32 and
- 4 inserting the following:
- 5 "Sec. ____ . NEW SECTION. 901.11 SPECIAL SENTENCE
- 6 FOR FELONY SERIOUS SEX OFFENSES.
- 7 1. At the time of sentencing of a person who has
- 8 been convicted of a serious sex offense which is a
- 9 felony, the court may".
- 10 2. Page 3, by striking lines 7 and 8, and
- 11 inserting the following: "any terms and conditions".
- 12 3. Page 3, line 13, by striking the figure "4"
- 13 and inserting the following: "2".
- 14 4. Page 3, by striking lines 26 through 29.
- 15 5. By striking page 3, line 34, through page 4,
- 16 line 29.
- 17 6. By redesignating as necessary.

By SHOULTZ of Black Hawk

H-9130 FILED APRIL 13, 1998

*W/D (p.1585)
4-14-98*

SENATE FILE 2398

H-9131

- 1 Amend Senate File 2398, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, line 15, by inserting after the word
- 4 "release" the following: ", unless, after an
- 5 appropriate assessment, the court or board determines
- 6 that the treatment would not be effective".

By LAMBERTI of Polk

H-9131 FILED APRIL 13, 1998

*Adopted
4-14-98
(p.1585)*

SENATE FILE 2398

H-9143

1 Amend the amendment, H-8542, to Senate File 2398,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 43, by inserting after the word
5 "which" the following: "has custody of or".

6 2. Page 1, line 44, by inserting after the word
7 "confinement" the following: "or is otherwise in
8 confinement".

9 3. Page 1, by inserting after line 48 the
10 following:

11 "_____. "Likely to engage in predatory acts of
12 sexual violence" means that the person more likely
13 than not will engage in acts of a sexually violent
14 nature. If a person is not confined at the time that
15 a petition is filed, a person is "likely to engage in
16 predatory acts of sexual violence" only if the person
17 commits a recent overt act."

18 4. Page 2, by inserting after line 7 the
19 following:

20 "_____. "Recent overt act" means any act that has
21 either caused harm of a sexually violent nature or
22 creates a reasonable apprehension of such harm."

23 5. Page 2, line 46, by inserting after the word
24 "person" the following: "who is confined".

25 6. Page 3, by striking lines 16 through 22.

26 7. Page 3, line 23, by striking the word
27 "required" and inserting the following: "given".

28 8. Page 4, line 10, by striking the word "If" and
29 inserting the following: "1. If".

30 9. Page 4, by inserting after line 19 the
31 following:

32 "2. A prosecuting attorney of the county in which
33 the person was convicted or charged, or the attorney
34 general if requested by the prosecuting attorney, may
35 file a petition alleging that a person is a sexually
36 violent predator and stating sufficient facts to
37 support such an allegation, if it appears that a
38 person who has committed a recent overt act meets any
39 of the following criteria:

40 a. The person was convicted of a sexually violent
41 offense and has been discharged after the completion
42 of the sentence imposed for the offense.

43 b. The person was charged with, but was acquitted
44 of, a sexually violent offense by reason of insanity
45 and has been released from confinement or any
46 supervision.

47 c. The person was charged with, but was found to
48 be incompetent to stand trial for, a sexually violent
49 offense and has been released from confinement or any
50 supervision."

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1 10. Page 4, line 32, by inserting after the word
2 "chapter." the following: "If the person is in
3 custody at the time of the filing of the petition, the
4 court shall determine whether a transfer of the person
5 to an appropriate secure facility is appropriate
6 pending the outcome of the proceedings or whether the
7 custody order should be delayed until the date of
8 release of the person."

9 11. Page 4, line 34, by inserting after the word
10 "custody" the following: "or being transferred to an
11 appropriate secure facility".

12 12. Page 5, line 26, by inserting after the word
13 "respondent" the following: "at state expense".

14 13. Page 6, line 3, by striking the word
15 "INTERAGENCY" and inserting the following: "CHAPTER
16 28E".

17 14. Page 6, by inserting after line 4, the
18 following:

19 "____. If the person charged with a sexually
20 violent offense has been found incompetent to stand
21 trial and the person is about to be released pursuant
22 to section 812.5, or the person has been found not
23 guilty of a sexually violent offense by reason of
24 insanity, if a petition has been filed seeking the
25 person's commitment under this chapter, the court
26 shall first hear evidence and determine whether the
27 person did commit the act or acts charged. At the
28 hearing on this issue, the rules of evidence
29 applicable in criminal cases shall apply, and all
30 constitutional rights available to defendants at
31 criminal trials, other than the right not to be tried
32 while incompetent, shall apply. After hearing
33 evidence on this issue, the court shall make specific
34 findings on whether the person did commit the act or
35 acts charged, the extent to which the person's
36 incompetence or insanity affected the outcome of the
37 hearing, including its effect on the person's ability
38 to consult with and assist counsel and to testify on
39 the person's own behalf, the extent to which the
40 evidence could be reconstructed without the assistance
41 of the person, and the strength of the prosecution's
42 case. If after the conclusion of the hearing on this
43 issue, the court finds, beyond a reasonable doubt,
44 that the person did commit the act or acts charged,
45 the court shall enter a final order, appealable by the
46 person, on that issue, and may proceed to consider
47 whether the person should be committed pursuant to
48 this chapter."

49 15. Page 6, line 5, by striking the words
50 "completion of any" and inserting the following:

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- 1 "completion of the probable cause".
2 16. Page 6, by striking lines 48 and 49 and
3 inserting the following: "enter into a chapter 28E
4 agreement with the department of corrections or other
5 appropriate agency in this state or another state for
6 the confinement of".
7 17. Page 7, line 3, by striking the words "an
8 interagency" and inserting the following: "a chapter
9 28E".
10 18. Page 7, by striking lines 20 through 48.
11 19. By striking page 10, line 27, through page
12 11, line 8.
13 20. Page 11, by inserting after line 38 the
14 following:
15 "Sec. _____. Section 815.11, Code 1997, is amended
16 to read as follows:
17 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.
18 Costs incurred under chapter 229A, section 232.141,
19 subsection 3, paragraph "c", sections 814.9, 814.10,
20 814.11, 815.4, 815.5, 815.6, 815.7, 815.10, or the
21 rules of criminal procedure on behalf of an indigent
22 shall be paid from funds appropriated by the general
23 assembly to the department of inspections and appeals
24 for those purposes."
25 21. By renumbering, relettering, or redesignating
26 and correcting internal references as necessary.

By LAMBERTI of Polk

H-9143 FILED APRIL 13, 1998

*Adopted 4-14-98
(P.1585)*

SENATE FILE 2398

H-9151

- 1 Amend the amendment, H-8542, to Senate File 2398,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 2, by striking lines 31 through 35.

By KREIMAN of Davis

H-9151 FILED APRIL 14, 1998

W/D 4/14/98 (P.1585)

HOUSE AMENDMENT TO
SENATE FILE 2398

S-5641

1 Amend Senate File 2398, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. NEW SECTION. 229A.1 LEGISLATIVE
6 FINDINGS.

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

28 The general assembly further finds that the
29 prognosis for rehabilitating sexually violent
30 predators in a prison setting is poor, because the
31 treatment needs of this population are very long-term,
32 and the treatment modalities for this population are
33 very different from the traditional treatment
34 modalities available in a prison setting or for
35 persons appropriate for commitment under chapter 229.
36 Therefore, the general assembly finds that a civil
37 commitment procedure for the long-term care and
38 treatment of the sexually violent predator is
39 necessary.

40 Sec. ____ . NEW SECTION. 229A.2 DEFINITIONS.

41 As used in this chapter:

42 1. "Agency with jurisdiction" means an agency
43 which has custody of or releases a person serving a
44 sentence or term of confinement or is otherwise in
45 confinement based upon a lawful order or authority,
46 and includes but is not limited to the department of
47 corrections, the department of human services, a
48 judicial district department of correctional services,
49 and the Iowa board of parole.

50 2. "Likely to engage in predatory acts of sexual

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1 violence" means that the person more likely than not
2 will engage in acts of a sexually violent nature. If
3 a person is not confined at the time that a petition
4 is filed, a person is "likely to engage in predatory
5 acts of sexual violence" only if the person commits a
6 recent overt act.

7 3. "Mental abnormality" means a congenital or
8 acquired condition affecting the emotional or
9 volitional capacity of a person and predisposing that
10 person to commit sexually violent offenses to a degree
11 which would constitute a menace to the health and
12 safety of others.

13 4. "Predatory" means acts directed toward a person
14 with whom a relationship has been established or
15 promoted for the primary purpose of victimization.

16 5. "Recent overt act" means any act that has
17 either caused harm of a sexually violent nature or
18 creates a reasonable apprehension of such harm.

19 6. "Sexually motivated" means that one of the
20 purposes for commission of a crime is the purpose of
21 sexual gratification of the perpetrator of the crime.

22 7. "Sexually violent offense" means:

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

24 b. A violation of any of the following if the
25 offense involves sexual abuse, attempted sexual abuse,
26 or intent to commit sexual abuse:

27 (1) Murder as defined in section 707.1.

28 (2) Kidnapping as defined in section 710.1.

29 (3) Burglary as defined in section 713.1.

30 (4) Child endangerment under section 726.6,
31 subsection 1, paragraph "e".

32 c. Sexual exploitation of a minor in violation of
33 section 728.12, subsection 1.

34 d. Pandering involving a minor in violation of
35 section 725.3, subsection 2.

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

38 f. An offense under prior law of this state or an
39 offense committed in another jurisdiction which would
40 constitute an equivalent offense under paragraphs "a"
41 through "e".

42 g. Any act which, either at the time of sentencing
43 for the offense or subsequently during civil
44 commitment proceedings pursuant to this chapter, has
45 been determined beyond a reasonable doubt to have been
46 sexually motivated.

47 8. "Sexually violent predator" means a person who
48 has been convicted of or charged with a sexually
49 violent offense and who suffers from a mental
50 abnormality which makes the person likely to engage in

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1 predatory acts constituting sexually violent offenses.
2 if not confined in a secure facility.

3 Sec. ____ . NEW SECTION. 229A.3 NOTICE OF
4 DISCHARGE OF SEXUALLY VIOLENT PREDATOR -- IMMUNITY
5 FROM LIABILITY -- MULTIDISCIPLINARY TEAM --
6 PROSECUTOR'S REVIEW COMMITTEE -- ASSESSMENT OF PERSON.

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

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

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

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

28 2. If notice is given under subsection 1, the
29 agency with jurisdiction shall inform the attorney
30 general and the multidisciplinary team established in
31 subsection 4, of both of the following:

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

34 b. Documentation of any institutional evaluation
35 and any treatment received.

36 3. The agency with jurisdiction, its employees,
37 officials, members of the multidisciplinary team
38 established in subsection 4, members of the
39 prosecutor's review committee appointed as provided in
40 subsection 5, and individuals contracting, appointed,
41 or volunteering to perform services under this section
42 shall be immune from liability for any good-faith
43 conduct under this section.

44 4. The director of the department of corrections
45 shall establish a multidisciplinary team which may
46 include individuals from other state agencies to
47 review available records of each person referred to
48 such team pursuant to subsection 1. The team, within
49 thirty days of receiving notice, shall assess whether
50 or not the person meets the definition of a sexually

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1 violent predator. The team shall notify the attorney
2 general of its assessment.

3 5. The attorney general shall appoint a
4 prosecutor's review committee to review the records of
5 each person referred to the attorney general pursuant
6 to subsection 1. The prosecutor's review committee
7 shall assist the attorney general in the determination
8 of whether or not the person meets the definition of a
9 sexually violent predator. The assessment of the
10 multidisciplinary team shall be made available to the
11 attorney general and the prosecutor's review
12 committee.

13 Sec. ____ . NEW SECTION. 229A.4 PETITION, TIME,
14 CONTENTS.

15 1. If it appears that a person presently confined
16 may be a sexually violent predator and the
17 prosecutor's review committee has determined that the
18 person meets the definition of a sexually violent
19 predator, the attorney general may file a petition,
20 within seventy-five days of the date the attorney
21 general received the written notice by the agency of
22 jurisdiction pursuant to section 229A.3, alleging that
23 the person is a sexually violent predator and stating
24 sufficient facts to support such an allegation.

25 2. A prosecuting attorney of the county in which
26 the person was convicted or charged, or the attorney
27 general if requested by the prosecuting attorney, may
28 file a petition alleging that a person is a sexually
29 violent predator and stating sufficient facts to
30 support such an allegation, if it appears that a
31 person who has committed a recent overt act meets any
32 of the following criteria:

33 a. The person was convicted of a sexually violent
34 offense and has been discharged after the completion
35 of the sentence imposed for the offense.

36 b. The person was charged with, but was acquitted
37 of, a sexually violent offense by reason of insanity
38 and has been released from confinement or any
39 supervision.

40 c. The person was charged with, but was found to
41 be incompetent to stand trial for, a sexually violent
42 offense and has been released from confinement or any
43 supervision.

44 Sec. ____ . NEW SECTION. 229A.5 PERSON TAKEN INTO
45 CUSTODY, DETERMINATION OF PROBABLE CAUSE, HEARING,
46 EVALUATION.

47 1. Upon filing of a petition under section 229A.4,
48 the court shall make a preliminary determination as to
49 whether probable cause exists to believe that the
50 person named in the petition is a sexually violent

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1 predator. Upon a preliminary finding of probable
2 cause, the court shall direct that the person named in
3 the petition be taken into custody and that the person
4 be served with a copy of the petition and any
5 supporting documentation and notice of the procedures
6 required by this chapter. If the person is in custody
7 at the time of the filing of the petition, the court
8 shall determine whether a transfer of the person to an
9 appropriate secure facility is appropriate pending the
10 outcome of the proceedings or whether the custody
11 order should be delayed until the date of release of
12 the person.

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

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

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

24 c. To appear in person at the hearing.

25 d. To be represented by counsel.

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

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

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

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

36 4. At the conclusion of the hearing, the court
37 shall enter an order which does both of the following:

38 a. Verifies the respondent's identity.

39 b. Determines whether probable cause exists to
40 believe that the respondent is a sexually violent
41 predator.

42 5. If the court determines that probable cause
43 does exist, the court shall direct that the respondent
44 be transferred to an appropriate secure facility,
45 including, but not limited to, a county jail, for an
46 evaluation as to whether the respondent is a sexually
47 violent predator. The evaluation shall be conducted
48 by a person deemed to be professionally qualified to
49 conduct such an examination.

50 Sec. ____ . NEW SECTION. 229A.6 COUNSEL AND

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1 EXPERTS, INDIGENT PERSONS.

2 1. A respondent to a petition alleging the person
3 to be a sexually violent predator shall be entitled to
4 the assistance of counsel upon the filing of the
5 petition under section 299A.4 and, if the respondent
6 is indigent, the court shall appoint counsel to assist
7 the respondent at state expense.

8 2. If a respondent is subjected to an examination
9 under this chapter, the respondent may retain experts
10 or professional persons to perform an independent
11 examination on the respondent's behalf. If the
12 respondent wishes to be examined by a qualified expert
13 or professional person of the respondent's own choice,
14 the examiner of the respondent's choice shall be given
15 reasonable access to the respondent for the purpose of
16 the examination, as well as access to all relevant
17 medical and psychological records and reports. If the
18 respondent is indigent, the court, upon the
19 respondent's request, shall determine whether the
20 services are necessary and the reasonable compensation
21 for the services. If the court determines that the
22 services are necessary and the requested compensation
23 for the services is reasonable, the court shall assist
24 the respondent in obtaining an expert or professional
25 person to perform an examination or participate in the
26 trial on the respondent's behalf. The court shall
27 approve payment for such services upon the filing of a
28 certified claim for compensation supported by a
29 written statement specifying the time expended,
30 services rendered, expenses incurred on behalf of the
31 respondent, and compensation received in the same case
32 or for the same services from any other source.

33 Sec. ____ . NEW SECTION. 229A.7 TRIAL,
34 DETERMINATION, COMMITMENT PROCEDURE, CHAPTER 28E
35 AGREEMENTS, MISTRIALS.

36 1. If the person charged with a sexually violent
37 offense has been found incompetent to stand trial and
38 the person is about to be released pursuant to section
39 812.5, or the person has been found not guilty of a
40 sexually violent offense by reason of insanity, if a
41 petition has been filed seeking the person's
42 commitment under this chapter, the court shall first
43 hear evidence and determine whether the person did
44 commit the act or acts charged. At the hearing on
45 this issue, the rules of evidence applicable in
46 criminal cases shall apply, and all constitutional
47 rights available to defendants at criminal trials,
48 other than the right not to be tried while
49 incompetent, shall apply. After hearing evidence on
50 this issue, the court shall make specific findings on

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1 whether the person did commit the act or acts charged,
2 the extent to which the person's incompetence or
3 insanity affected the outcome of the hearing,
4 including its effect on the person's ability to
5 consult with and assist counsel and to testify on the
6 person's own behalf, the extent to which the evidence
7 could be reconstructed without the assistance of the
8 person, and the strength of the prosecution's case.

9 If after the conclusion of the hearing on this issue,
10 the court finds, beyond a reasonable doubt, that the
11 person did commit the act or acts charged, the court
12 shall enter a final order, appealable by the person,
13 on that issue, and may proceed to consider whether the
14 person should be committed pursuant to this chapter.

15 2. Within sixty days after the completion of the
16 probable cause hearing held pursuant to section
17 229A.5, the court shall conduct a trial to determine
18 whether the respondent is a sexually violent predator.
19 The trial may be continued upon the request of either
20 party and a showing of good cause, or by the court on
21 its own motion in the due administration of justice,
22 and when the respondent will not be substantially
23 prejudiced. The respondent, the attorney general, or
24 the judge shall have the right to demand that the
25 trial be before a jury. Such demand for the trial to
26 be before a jury shall be filed, in writing, at least
27 four days prior to trial. The number and selection of
28 jurors shall be determined as provided in chapter
29 607A. If no demand is made, the trial shall be before
30 the court.

31 3. At trial, the court or jury shall determine
32 whether, beyond a reasonable doubt, the respondent is
33 a sexually violent predator. If the determination
34 that the respondent is a sexually violent predator is
35 made by a jury, the determination shall be by
36 unanimous verdict of such jury.

37 If the court or jury determines that the respondent
38 is a sexually violent predator, the respondent shall
39 be committed to the custody of the director of the
40 department of human services for control, care, and
41 treatment until such time as the person's mental
42 abnormality has so changed that the person is safe to
43 be at large. The determination may be appealed.

44 4. The control, care, and treatment of a person
45 determined to be a sexually violent predator shall be
46 provided at a facility operated by the department of
47 human services. At all times, persons committed for
48 control, care, and treatment by the department of
49 human services pursuant to this chapter shall be kept
50 in a secure facility and those patients shall be

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1 segregated at all times from any other patient under
2 the supervision of the department of human services.
3 A person committed pursuant to this chapter to the
4 custody of the department of human services may be
5 kept in a facility or building separate from any other
6 patient under the supervision of the department of
7 human services. The department of human services may
8 enter into a chapter 28E agreement with the department
9 of corrections or other appropriate agency in this
10 state or another state for the confinement of patients
11 who have been determined to be sexually violent
12 predators. Patients who are in the confinement of the
13 director of the department of corrections pursuant to
14 a chapter 28E agreement shall be housed and managed
15 separately from criminal offenders in the custody of
16 the director of the department of corrections, and
17 except for occasional instances of supervised
18 incidental contact, shall be segregated from those
19 offenders.

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

31 Sec. . NEW SECTION. 229A.8 ANNUAL
32 EXAMINATIONS, DISCHARGE PETITIONS BY PERSONS
33 COMMITTED.

34 1. Each person committed under this chapter shall
35 have a current examination of the person's mental
36 abnormality made once every year. The person may
37 retain, or if the person is indigent and so requests,
38 the court may appoint a qualified expert or
39 professional person to examine such person, and such
40 expert or professional person shall be given access to
41 all records concerning the person.

42 2. The annual report shall be provided to the
43 court that committed the person under this chapter.
44 The court shall conduct an annual review and probable
45 cause hearing on the status of the committed person.

46 3. Nothing contained in this chapter shall
47 prohibit the person from otherwise petitioning the
48 court for discharge at the probable cause hearing.
49 The director of human services shall provide the
50 committed person with an annual written notice of the

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

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

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

33 Sec. ____ . NEW SECTION. 229A.9 DETENTION AND
34 COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.
35 The involuntary detention or commitment of persons
36 under this chapter shall conform to constitutional
37 requirements for care and treatment.

38 Sec. ____ . NEW SECTION. 229A.10 PETITION FOR
39 DISCHARGE -- PROCEDURE.

40 If the director of human services determines that
41 the person's mental abnormality has so changed that
42 the person is not likely to commit predatory acts or
43 sexually violent offenses if discharged, the director
44 shall authorize the person to petition the court for
45 discharge. The petition shall be served upon the
46 court and the attorney general. The court, upon
47 receipt of the petition for discharge, shall order a
48 hearing within thirty days. The attorney general
49 shall represent the state, and shall have the right to
50 have the petitioner examined by an expert or

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1 professional person of the attorney general's choice.
2 The hearing shall be before a jury if demanded by
3 either the petitioner or the attorney general. The
4 burden of proof shall be upon the attorney general to
5 show beyond a reasonable doubt that the petitioner's
6 mental abnormality or personality disorder remains
7 such that the petitioner is not safe to be at large
8 and that if discharged is likely to commit predatory
9 acts or sexually violent offenses.

10 Sec. ____ . NEW SECTION. 229A.11 SUBSEQUENT
11 DISCHARGE PETITIONS, LIMITATIONS.

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

32 Sec. ____ . NEW SECTION. 229A.12 DIRECTOR OF HUMAN
33 SERVICES -- RESPONSIBILITY FOR COSTS -- DUTIES --
34 REIMBURSEMENT.

35 The director of human services shall be responsible
36 for all costs relating to the evaluation and treatment
37 of persons committed to the director's custody under
38 any provision of this chapter. Reimbursement may be
39 obtained by the director from the patient and any
40 person legally liable or bound by contract for the
41 support of the patient for the cost of care and
42 treatment provided.

43 Sec. ____ . NEW SECTION. 229A.13 NOTICE TO VICTIMS
44 OF DISCHARGE OF PERSONS COMMITTED.

45 In addition to any other information required to be
46 released under this chapter, prior to the discharge of
47 a person committed under this chapter, the director of
48 human services shall give written notice of the
49 person's discharge to any living victim of the
50 person's activities or crime whose address is known to

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1 the director or, if the victim is deceased, to the
2 victim's family, if the family's address is known.
3 Failure to notify shall not be a reason for
4 postponement of discharge. Nothing in this section
5 shall create a cause of action against the state or an
6 employee of the state acting within the scope of the
7 employee's employment as a result of the failure to
8 notify pursuant to this action.

9 Sec. ____ . NEW SECTION. 229A.15 SEVERABILITY.

10 If any provision of this chapter or the application
11 thereof to any person or circumstances is held
12 invalid, the invalidity shall not affect other
13 provisions or applications of the chapter which can be
14 given effect without the invalid provisions or
15 application and, to this end, the provisions of this
16 chapter are severable.

17 Sec. ____ . NEW SECTION. 229A.16 RELEASE OF
18 CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

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

27 Sec. ____ . NEW SECTION. 229A.17 COURT RECORDS --
28 SEALED AND OPENED BY COURT ORDER.

29 Any psychological reports, drug and alcohol
30 reports, treatment records, reports of any diagnostic
31 center, medical records, or victim impact statements
32 which have been submitted to the court or admitted
33 into evidence under this chapter shall be part of the
34 record but shall be sealed and opened only on order of
35 the court.

36 Sec. ____ . NEW SECTION. 299A.18 SHORT TITLE.

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

39 Sec. ____ . Section 815.11, Code 1997, is amended to
40 read as follows:

41 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

42 Costs incurred under chapter 229A, section 232.141,
43 subsection 3, paragraph "c", sections 814.9, 814.10,
44 814.11, 815.4, 815.5, 815.6, 815.7, 815.10, or the
45 rules of criminal procedure on behalf of an indigent
46 shall be paid from funds appropriated by the general
47 assembly to the department of inspections and appeals
48 for those purposes."

49 2. Page 2, line 15, by inserting after the word
50 "release" the following: ", unless, after an

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Page 12

- 1 appropriate assessment, the court or board determines
- 2 that the treatment would not be effective".
- 3 3. By renumbering, relettering, or redesignating
- 4 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5641 FILED APRIL 14, 1998

Senate Concurred

4-15-98

(P. 1275)

Angelo
Halvorson
King

SSB 2182
Judiciary
Succeeded By
SF/HF 2398
SENATE FILE

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MCKEAN)

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

A BILL FOR

1 An Act relating to the confinement and treatment of sex
2 offenders.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 901A.2, subsections 3 and 4, Code 1997,
2 are amended to read as follows:

3 3. A Except as otherwise provided in subsection 4A, a
4 person convicted of a sexually predatory offense which is a
5 felony, who has a prior conviction for a sexually predatory
6 offense, shall be sentenced to and shall serve twice the
7 maximum period of incarceration for the offense, or twenty-
8 five years, whichever is greater, notwithstanding any other
9 provision of the Code to the contrary. A person sentenced
10 under this subsection shall not have the person's sentence
11 reduced under chapter 903A or otherwise by more than fifteen
12 percent.

13 4. A Except as otherwise provided in subsection 4A, a
14 person convicted of a sexually predatory offense which is a
15 felony who has previously been sentenced under subsection 3
16 shall be sentenced to life in prison on the same terms as a
17 class "A" felon under section 902.1, notwithstanding any other
18 provision of the Code to the contrary. In order for a person
19 to be sentenced under this subsection, the prosecuting
20 attorney shall allege and prove that this section is
21 applicable to the person.

22 Sec. 2. Section 901A.2, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 4A. A person who has been convicted of a
25 violation of either section 709.3, subsection 2, or section
26 709.4, subsection 2, paragraph "b" or "c", shall, upon a
27 second conviction for a violation of either section 709.3,
28 subsection 2, or section 709.4, subsection 2, paragraph "b" or
29 "c", be committed to the custody of the director of the Iowa
30 department of corrections for the rest of the person's life.
31 The terms and conditions applicable to sentences for class "A"
32 felons under chapters 901 through 909 shall apply to persons
33 sentenced under this subsection.

34 Sec. 3. NEW SECTION. 903B.1 HORMONAL INTERVENTION
35 THERAPY -- CERTAIN SEX OFFENSES.

1 1. A person who has been convicted of a serious sex
2 offense may, upon a first conviction and in addition to any
3 other punishment provided by law, be required to undergo
4 medroxyprogesterone acetate treatment as part of any
5 conditions of release imposed by the court or the board of
6 parole. Upon a second or subsequent conviction, the court or
7 the board of parole shall require the person to undergo
8 medroxyprogesterone acetate treatment as a condition of
9 release. This section shall not apply if the person
10 voluntarily undergoes a permanent surgical alternative
11 approved by the court or the board of parole.

12 2. If a person is placed on probation and is not in
13 confinement at the time of sentencing, the presentence
14 investigation shall include a plan for initiation of treatment
15 as soon as is reasonably possible after the person is
16 sentenced. If the person is in confinement prior to release
17 on probation or parole, treatment shall commence prior to the
18 release of the person from confinement. Conviction of a
19 serious sex offense shall constitute exceptional circumstances
20 warranting a presentence investigation under section 901.2.

21 3. For purposes of this section, a "serious sex offense"
22 means any of the following offenses in which the victim was a
23 child who was, at the time the offense was committed, twelve
24 years of age or younger:

25 a. Sexual abuse in the first degree, in violation of
26 section 709.2.

27 b. Sexual abuse in the second degree, in violation of
28 section 709.3.

29 c. Sexual abuse in the third degree, in violation of
30 section 709.4.

31 d. Lascivious acts with a child, in violation of section
32 709.8.

33 e. Assault with intent, in violation of section 709.11.

34 f. Indecent contact with a minor, in violation of section
35 709.12.

1 g. Lascivious conduct with a minor, in violation of
2 section 709.14.

3 h. Sexual exploitation by a counselor in violation of
4 section 709.15.

5 i. Sexual exploitation of a minor, in violation of section
6 728.12, subsections 1 and 2.

7 4. The department of corrections, in consultation with the
8 board of parole, shall adopt rules which provide for the
9 initiation of medroxyprogesterone acetate treatment prior to
10 the parole or work release of a person who has been convicted
11 of a serious sex offense and who is required to undergo
12 treatment as a condition of release by the board of parole.
13 The department's rules shall also establish standards for the
14 supervision of the treatment by the judicial district
15 department of correctional services during the period of
16 release. Each district department of correctional services
17 shall adopt policies and procedures which provide for the
18 initiation or continuation of medroxyprogesterone acetate
19 treatment as a condition of release for each person who is
20 required to undergo the treatment by the court or the board of
21 parole. The board of parole shall, in consultation with the
22 department of corrections, adopt rules which relate to
23 initiation or continuation of medroxyprogesterone acetate
24 treatment as a condition of any parole or work release.

25 Sec. 4. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE.

26 The legislative council is requested to authorize an interim
27 study committee to issue a report to the general assembly
28 which convenes in 1999, concerning the treatments available
29 and used in the United States and other countries to
30 rehabilitate sex offenders and deter those persons from
31 engaging in criminal sexual acts or activities in the future.

32 EXPLANATION

33 This bill provides for the imposition of a life sentence
34 for persons who commit repeat acts of sexual abuse against
35 children age 15 and younger.

1 Currently, a person who commits sexual abuse of a child
2 under the age of 12 commits sexual abuse in the second degree
3 under Code section 709.3. Sexual abuse in the second degree
4 is a class "B" felony punishable by a sentence of imprisonment
5 not to exceed 25 years, 85 percent of which must be served
6 before the person can be released. Currently, a person
7 commits sexual abuse in the third degree under Code section
8 709.4 when the person commits sexual abuse of a child who is
9 12 or 13 or commits sexual abuse of a child who is 14 or 15
10 when any of the following applies: the child and the person
11 are members of the same household, the child and the person
12 are related within the fourth degree by blood or marriage, the
13 person uses a position of authority to coerce the child to
14 submit, or the person is five or more years older than the
15 child. Sexual abuse in the third degree is a class "C" felony
16 punishable by imprisonment not to exceed 10 years and a fine
17 of at least \$500 but not more than \$10,000.

18 The bill provides that if a person is convicted of one of
19 those specific violations of those sections and has previously
20 been convicted of one of those violations of those sections,
21 the person is to be sentenced to life imprisonment on the same
22 terms and conditions that apply to class "A" felons.

23 The bill also creates new Code section 903B.1, which
24 provides that persons who are convicted of certain enumerated
25 "serious sex offenses" may, on a first conviction, and shall,
26 on a second or subsequent conviction, be required to undergo
27 hormonal intervention therapy by the court or board of parole.
28 If the person has been confined, the treatment is to commence
29 before the person is released. If the person was not confined
30 at the time of sentencing, a plan for commencement of
31 treatment is to be developed and included in the presentence
32 investigation report. "Serious sex offenses" includes sexual
33 abuse in the first, second, or third degree, lascivious acts
34 with a child, assault with intent to commit sexual abuse,
35 sexual exploitation by a counselor, and sexual exploitation of

1 a minor.

2 The bill also contains a provision requesting that the
3 legislative council establish an interim study committee
4 concerning the treatments available and used in the United
5 States and other countries to rehabilitate persons who have
6 engaged in criminal sexual acts or activities and deter them
7 from future acts. The committee is to issue a report to the
8 general assembly which convenes in 1999.

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SENATE FILE 2398

AN ACT
RELATING TO THE CONFINEMENT AND TREATMENT OF SEX OFFENDERS.

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

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

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

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

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

As used in this chapter:

1. "Agency with jurisdiction" means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.
2. "Likely to engage in predatory acts of sexual violence" means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is "likely to engage in predatory acts of sexual violence" only if the person commits a recent overt act.
3. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.
4. "Predatory" means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.
5. "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

6. "Sexually motivated" means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

7. "Sexually violent offense" means:

a. A violation of any provision of chapter 709.

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

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

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

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

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

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

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

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

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

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

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

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

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

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

2. If notice is given under subsection 1, the agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4, of both of the following:

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

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

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

4. The director of the department of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to

subsection 1. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

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

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

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition, within seventy-five days of the date the attorney general received the written notice by the agency of jurisdiction pursuant to section 229A.3, alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

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

1. Upon filing of a petition under section 229A.4, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

2. Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. At the probable cause hearing, the detained person shall have the following rights:

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

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

c. To appear in person at the hearing.

d. To be represented by counsel.

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

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

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

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

4. At the conclusion of the hearing, the court shall enter an order which does both of the following:

- a. Verifies the respondent's identity.
- b. Determines whether probable cause exists to believe that the respondent is a sexually violent predator.

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

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

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

2. If a respondent is subjected to an examination under this chapter, the respondent may retain experts or professional persons to perform an independent examination on the respondent's behalf. If the respondent wishes to be examined by a qualified expert or professional person of the respondent's own choice, the examiner of the respondent's choice shall be given reasonable access to the respondent for the purpose of the examination, as well as access to all relevant medical and psychological records and reports. If the respondent is indigent, the court, upon the respondent's request, shall determine whether the services are necessary

and the reasonable compensation for the services. If the court determines that the services are necessary and the requested compensation for the services is reasonable, the court shall assist the respondent in obtaining an expert or professional person to perform an examination or participate in the trial on the respondent's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the respondent, and compensation received in the same case or for the same services from any other source.

Sec. 7. NEW SECTION. 229A.7 TRIAL, DETERMINATION, COMMITMENT PROCEDURE, CHAPTER 28E AGREEMENTS, MISTRIALS.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to section 812.5, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a

reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

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

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

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

4. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be

segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the confinement of the director of the department of corrections pursuant to a chapter 28E agreement shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

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

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

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

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

3. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge at the probable cause hearing. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

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

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

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

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

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

If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts or sexually violent offenses.

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

Nothing in this chapter shall prohibit a person from filing a petition for discharge pursuant to this chapter. However, if a person has previously filed a petition for discharge without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall summarily deny

the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court determines that a petition is frivolous, the court shall deny the petition without a hearing.

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

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

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

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

Sec. 14. NEW SECTION. 229A.15 SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity

shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are severable.

Sec. 15. NEW SECTION. 229A.16 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

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

Sec. 16. NEW SECTION. 229A.17 COURT RECORDS -- SEALED AND OPENED BY COURT ORDER.

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

Sec. 17. NEW SECTION. 229A.18 SHORT TITLE.

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

Sec. 18. Section 815.11, Code 1997, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, section 232.141, subsection 3, paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, 815.10, or the rules of criminal procedure on behalf of an indigent shall be paid from funds appropriated by the general assembly to the department of inspections and appeals for those purposes.

Sec. 19. Section 901A.2, subsections 3 and 4, Code 1997, are amended to read as follows:

3. A Except as otherwise provided in subsection 4A, a person convicted of a sexually predatory offense which is a felony, who has a prior conviction for a sexually predatory offense, shall be sentenced to and shall serve twice the maximum period of incarceration for the offense, or twenty-five years, whichever is greater, notwithstanding any other provision of the Code to the contrary. A person sentenced under this subsection shall not have the person's sentence reduced under chapter 903A or otherwise by more than fifteen percent.

4. A Except as otherwise provided in subsection 4A, a person convicted of a sexually predatory offense which is a felony who has previously been sentenced under subsection 3 shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. In order for a person to be sentenced under this subsection, the prosecuting attorney shall allege and prove that this section is applicable to the person.

Sec. 20. Section 901A.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. A person who has been convicted of a violation of section 709.3, subsection 2, shall, upon a second conviction for a violation of section 709.3, subsection 2, be committed to the custody of the director of the Iowa department of corrections for the rest of the person's life. In determining whether a conviction is a first or second conviction under this subsection, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this subsection. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection.

Sec. 21. NEW SECTION. 903B.1 HORMONAL INTERVENTION THERAPY -- CERTAIN SEX OFFENSES.

1. A person who has been convicted of a serious sex offense may, upon a first conviction and in addition to any other punishment provided by law, be required to undergo medroxyprogesterone acetate treatment as part of any conditions of release imposed by the court or the board of parole. The treatment prescribed in this section may utilize an approved pharmaceutical agent other than medroxyprogesterone acetate. Upon a second or subsequent conviction, the court or the board of parole shall require the person to undergo medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release, unless, after an appropriate assessment, the court or board determines that the treatment would not be effective. In determining whether a conviction is a first or second conviction under this section, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this section. This section shall not apply if the person voluntarily undergoes a permanent surgical alternative approved by the court or the board of parole.

2. If a person is placed on probation and is not in confinement at the time of sentencing, the presentence investigation shall include a plan for initiation of treatment as soon as is reasonably possible after the person is sentenced. If the person is in confinement prior to release on probation or parole, treatment shall commence prior to the release of the person from confinement. Conviction of a serious sex offense shall constitute exceptional circumstances warranting a presentence investigation under section 901.2.

3. If the serious sex offense is a felony, the court may include, in addition to any other punishment provided by law, that the person receive a special sentence committing the

person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The special sentence imposed under this subsection shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying serious sex offense and shall be supervised as if on parole, shall include the same treatment terms and conditions as required in subsection 1, and may include any other terms and conditions deemed appropriate to protect the public and promote the rehabilitation of the person. Notwithstanding section 906.15, a person receiving an additional special sentence pursuant to this subsection shall not be discharged from parole.

4. For purposes of this section, a "serious sex offense" means any of the following offenses in which the victim was a child who was, at the time the offense was committed, twelve years of age or younger:

- a. Sexual abuse in the first degree, in violation of section 709.2.
- b. Sexual abuse in the second degree, in violation of section 709.3.
- c. Sexual abuse in the third degree, in violation of section 709.4.
- d. Lascivious acts with a child, in violation of section 709.8.
- e. Assault with intent, in violation of section 709.11.
- f. Indecent contact with a minor, in violation of section 709.12.
- g. Lascivious conduct with a minor, in violation of section 709.14.
- h. Sexual exploitation by a counselor in violation of section 709.15.
- i. Sexual exploitation of a minor, in violation of section 728.12, subsections 1 and 2.

5. The department of corrections, in consultation with the board of parole, shall adopt rules which provide for the initiation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment prior to the parole or work release of a person who has been convicted of a serious sex offense and who is required to undergo treatment as a condition of release by the board of parole. The department's rules shall also establish standards for the supervision of the treatment by the judicial district department of correctional services during the period of release. Each district department of correctional services shall adopt policies and procedures which provide for the initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release for each person who is required to undergo the treatment by the court or the board of parole. The board of parole shall, in consultation with the department of corrections, adopt rules which relate to initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of any parole or work release. Any rules, standards, and policies and procedures adopted shall provide for the continuation of the treatment until the agency in charge of supervising the treatment determines that the treatment is no longer necessary.

6. A person who is required to undergo medroxyprogesterone acetate treatment, or treatment utilizing another approved pharmaceutical agent, pursuant to this section, shall be required to pay a reasonable fee to pay for the costs of providing the treatment. A requirement that a person pay a fee shall include provision for reduction, deferral, or waiver of payment if the person is financially unable to pay the fee.

Sec. 22. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE. The legislative council is requested to authorize an interim study committee to issue a report to the general assembly which convenes in 1999, concerning the treatments available

and used in the United States and other countries to rehabilitate juvenile and adult sex offenders and deter those persons from engaging in criminal sexual acts or activities in the future.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2398, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 6, 1998

TERRY E. BRANSTAD
Governor