



Note to Reader:

Legislative Guides, prepared in an objective and nonpartisan manner, provide a general survey of a particular area of the law and are intended for use primarily by members of the Iowa General Assembly and their staffs. Legislative Guides are updated periodically to reflect changes in the law. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

This Legislative Guide was revised and updated by Adrienne Seusy, J.D., University of Idaho College of Law, 1990. Ms. Seusy has been a Legal Counsel for the Legislative Services Agency since 2018, staffs the House Human Resources Committee and the Health and Human Services Joint Appropriations Subcommittee, and drafts primarily in the areas of child and adult welfare, juvenile justice, and mental health and civil commitment.

Ms. Seusy can be reached by telephone at 515.281.3444 or by email at: adrienne.seusy@legis.iowa.gov

Iowa Legislative Services Agency
State Capitol
Des Moines, IA 50319

December 2019

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Table of Contents

I. Introduction	1
II. Characteristics of Persons Committed to the Sexually Violent Predator Program.....	1
III. Eligibility	2
IV. Process	3
A. Commitment of a Sexually Violent Predator	3
1. Petition	3
2. Probable Cause Hearing	4
3. Trial and Commitment.....	4
B. Control, Care, and Treatment.....	5
C. Annual Review	6
D. Final Hearing	7
E. Petition for Discharge or Placement in a Transitional Release Program	8
1. With Authorization	8
2. Without Authorization.....	8
F. Transitional Release.....	8
G. Release with Supervision.....	9
V. Criminal Offenses Committed While in Custody	10
VI. Constitutional Issues	11
VII. Summary.....	13



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

I. Introduction

This Legislative Guide provides an overview of Iowa's law on the civil commitment of sexually violent predators for custodial control, care, and treatment (Sexually Violent Predator Act). In the landmark case *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that permitted the civil commitment of certain sexually violent criminal offenders after the criminals' sentences had been completed.¹ The United States Supreme Court in 2002 affirmed *Kansas v. Hendricks*, and in so doing the Court stated in order for a sex offender to be civilly committed, the state must prove a serious difficulty in controlling behavior.²

In 1998, the General Assembly passed the Sexually Violent Predator Act, which became effective on July 1, 1998. The Iowa Supreme Court has held that the Sexually Violent Predator Act does not violate the Equal Protection Clause under either the United States or the Iowa Constitution.³ The Court has also concluded that the Act does not violate the Ex Post Facto or the Double Jeopardy Clause of the United States or the Iowa Constitution or deny a person due process under the United States or the Iowa Constitution.⁴

This guide addresses who is eligible for this form of civil commitment, the process of civilly committing a sexually violent predator, what type of control, care, and treatment methods are used, how a person is released from commitment, and constitutional issues related to the Act.

The Sexually Violent Predator Act is found in Iowa Code chapter 229A. References to the Iowa Code or Code are to the 2020 Iowa Code. The references to the Iowa Administrative Code are current to August 2019.

II. Characteristics of Persons Committed to the Sexually Violent Predator Program

The Civil Commitment Unit for Sexual Offenders (CCUSO) provides secure, long-term, inpatient treatment for violent sexual predators who have served their prison terms for a sexually violent offense, but who, in a separate civil trial have been found likely to commit further violent sexual offenses. The CCUSO program has a 150-bed capacity.⁵ There are 22 states with inpatient treatment programs like CCUSO.⁶ As of June 30, 2019, there were 128 persons in the CCUSO program, with 104 persons residing in the secure, committed program, 16 persons residing in the transition release program, 4 persons in release with supervision, and 4 persons were in prison.⁷ Ten admissions to the program occurred in state fiscal year 2019.⁸ Currently, all persons in the CCUSO program are

¹ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

² *Kansas v. Crane*, 534 U.S. 407 (2002).

³ *In re Detention of Morrow*, 616 N.W.2d 544, 549 (Iowa 2000). See generally U.S. Const. amend. XIV and Iowa Const. art. 1, §6 (equal protection).

⁴ *In re Detention of Garren*, 620 N.W.2d 275, 284 (Iowa 2000). See generally U.S. Const. art. 1, §10 and Iowa Const. art. 1, §21 (ex post facto); U.S. Const. amend. V and Iowa Const. art. I, §12 (double jeopardy); and U.S. Const. amend XIV and Iowa Const. art. I, §9 (due process).

⁵ Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, p. 2 (2019), dhs.iowa.gov/mhds/mental/in-patient/ccuso (last visited September 27, 2019).

⁶ *Id.*

⁷ Iowa Department of Human Services, Iowa Council on Human Services, State Fiscal Year 2021 Budget Submission, p. 4-20 (2019), dhs.iowa.gov/sites/default/files/4_Promote_lowans_Behavioral_Health.pdf?100220192029 (last visited September 27, 2019).

⁸ *Id.*

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS



male, with ages ranging from 23 to 77, with an average age of 50 years old.⁹ A total of 181 persons have been committed to the CCUSO program since 1999 and a total of 52 persons have been discharged from the CCUSO program.¹⁰ Twenty-one persons have been discharged because they no longer met the criteria for commitment, 14 persons died while in the CCUSO program, and 17 persons were discharged from the CCUSO program due to legal decisions.¹¹ The average annual cost of care to the Department of Human Services per person civilly committed to the CCUSO program is \$93,549.¹² The annual cost of care per person includes costs for payments to community-based corrections for the supervision and housing of persons in release with supervision and costs associated with litigation.¹³

III. Eligibility

The Attorney General or a county attorney may file a petition to commit a convicted or charged offender who meets the definition of a sexually violent predator.¹⁴ A sexually violent predator is defined as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.¹⁵ The General Assembly has found that a small but extremely dangerous group of persons 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.¹⁶ The General Assembly has further found that a sexually violent predator's likelihood of engaging in repeat acts of predatory sexual violence is high and that the involuntary commitment procedure under Iowa Code chapter 229 is inadequate to address the risk such predators pose to society.¹⁷

⁹ Id.

¹⁰ Email from Carrie L. Malone, Legislative Liaison, Iowa Department of Human Services (August 30, 2019) (on file with author).

¹¹ Id.

¹² Id.

¹³ Iowa Department of Human Services, Iowa Council on Human Services, State Fiscal Year 2021 Budget Submission, p. 4-20 (2019), dhs.iowa.gov/sites/default/files/4_Promote_lowans_Behavioral_Health.pdf?100220192029 (last visited September 27, 2019).

¹⁴ Iowa Code §§229A.4(1), 229A.4(2).

¹⁵ Under Iowa Code section 229A.2(3), "convicted" means found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction including in a federal, military, tribal, or foreign court, including but not limited to a juvenile who has been adjudicated delinquent, whether or not the juvenile court records have been sealed under Iowa Code section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. "Convicted" includes the conviction of a juvenile prosecuted as an adult. "Convicted" also includes a conviction for an attempt or conspiracy to commit an offense. "Convicted" does not mean a plea, sentence, adjudication, deferred sentence, or deferred judgment which has been reversed or otherwise set aside. Iowa Code section 229A.2(13) defines "sexually violent predator." Iowa Code section 229A.2(12) defines "sexually violent offense" as any violation of Iowa Code chapter 709 (relating to sexual abuse offenses), and murder, kidnapping, burglary, child endangerment, sexual exploitation, and pandering if the violation involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse. "Sexually violent offense" is also defined to mean any attempt or conspiracy to commit any offense listed in Iowa Code section 229A.2(12), any offense under prior law in this state or other state which is the equivalent to an offense listed in Iowa Code section 229A.2(12), and any act which has been determined beyond a reasonable doubt to have been sexually motivated.

¹⁶ Iowa Code §229A.1(1).

¹⁷ Iowa Code §229A.1(2).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

IV. Process

A. Commitment of a Sexually Violent Predator

1. Petition

a. Confined Persons

The filing of a petition to commit a confined person as a sexually violent predator is a three-step process.¹⁸ First, an agency with jurisdiction over a person who is confined and who also may meet the definition of a sexually violent predator must give written notice to the Attorney General, the multidisciplinary team, and a special multidisciplinary team within 90 days of the person's anticipated discharge date.¹⁹ Second, the multidisciplinary team which has been established by the Director of the Department of Corrections shall assess whether the person meets the definition of a sexually violent predator.²⁰ If the multidisciplinary team determines the person meets the definition of a sexually violent predator, the team forwards its recommendation to the Attorney General, the multidisciplinary team, and the prosecutor's review committee.²¹ Finally, the prosecutor's review committee, which is appointed by the Attorney General, then makes the determination as to whether the person meets the definition, and if so, the Attorney General may file a petition to commit the person as a sexually violent predator.²² The failure of the agency with jurisdiction to give notice to the Attorney General is not to be construed as a limit on persons subject to commitment under Iowa Code chapter 229A.²³

b. Unconfined Persons

The county attorney of the county in which the person was convicted or charged, or the Attorney General if requested by the county attorney, may file a petition to commit an unconfined person as a sexually violent predator if the person has committed a recent overt act and certain conditions are met.²⁴ The conditions include whether the person: (1) has been convicted of or charged with a sexually violent offense and is no longer presently confined for that offense, (2) was charged with, but subsequently acquitted by reason of insanity, of a sexually violent offense and has been released from confinement or any type of supervision, or (3) was charged with a sexually violent offense but found to

¹⁸ Iowa Code §§229A.3, 229A.4.

¹⁹ Iowa Code §229A.3(1). An agency with jurisdiction is defined in Iowa Code section 229A.2(1) as 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.

²⁰ Iowa Code §229A.3(4). As of August 2019, the multidisciplinary team includes the Department of Corrections' Deputy Director of Offender Services, the Director of the Iowa Coalition against Sexual Assault, a county sheriff, the Social Service Administrator of the Department of Human Services, a clinical psychologist from the Department of Corrections, the Director of the Sex Offender Treatment Program at the Mount Pleasant Correctional Facility, and the Classification Manager at the Department of Corrections.

²¹ Iowa Code §229A.3(4).

²² Iowa Code §§229A.3(5), 229A.4(1). The prosecutor's review committee consists of a designee from the Director of the Division of Criminal Investigation in the Department of Public Safety, a Deputy Attorney General, Special Assistant Attorney General, the President of the Iowa County Attorneys Association, two private attorneys, and the county attorney of the county in which the respondent was last convicted. Telephone interview with John McCormally, Office of the Attorney General, relating to the make-up of the prosecutor's review committee (August 31, 2012).

²³ Iowa Code §229A.3(6).

²⁴ Iowa Code §229A.4(2).

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS



be incompetent to stand trial and was released from confinement or any type of supervision.²⁵

2. Probable Cause Hearing

Upon the filing of a petition, the Court is required to make a preliminary determination as to whether probable cause exists to believe the person named in the petition is a sexually violent predator.²⁶ If the Court makes a preliminary determination that probable cause exists, the Court shall place the person in custody if the person is not already confined.²⁷ A person placed into custody as a sexually violent predator is not bailable prior to trial.²⁸ Within 72 hours of being taken into custody or transferred to an appropriate secure facility, the person is entitled to another probable cause hearing which shall be held to finally determine whether probable cause exists to believe the detained person is a sexually violent predator.²⁹ The person may waive the hearing and any party may seek a continuance upon a showing of good cause or the Court on its own motion in the due administration of justice if the person is not substantially prejudiced may continue the probable cause hearing.³⁰ The person has basically the same rights as a criminal defendant, including the right to be represented by counsel and to present evidence and cross-examine the state's witnesses.³¹ However, the rules of evidence do not apply and the state may rely solely upon the petition to prove probable cause.³² If at the conclusion of the probable cause hearing the Court determines that probable cause does exist, the Court shall direct the person to be held at an appropriate secure facility for an evaluation as to whether the person is a sexually violent predator.³³

3. Trial and Commitment

Within 90 days of the probable cause hearing or its waiver, a trial must be held to determine whether the person is a sexually violent predator.³⁴ The person or the person's attorney may waive the 90-day trial requirement.³⁵ If the 90-day trial requirement is not waived and the trial is not held within 90 days of the probable cause hearing or its waiver, the case shall be dismissed and the defendant released from custody.³⁶

The person may retain experts to perform an independent examination prior to trial.³⁷ If the Court determines the examination is necessary and the person is indigent,

²⁵ Iowa Code §229A.4(2). Under Iowa Code section 229A.2(8), "presently confined" means incarceration or detention in a correctional facility, a rehabilitation camp, a residential facility, a county jail, a halfway house, or any other comparable facility, including but not limited to placement at such a facility as a condition of probation, parole, or special sentence following conviction for a sexually violent offense. The definition was added in 2019. See *In re Wygle*, 910 N.W.2d 599 (Iowa 2018) and *In re Tripp*, 915 N.W.2d 867 (Iowa 2018) finding the defendant was not "presently confined."

²⁶ Iowa Code §229A.5(1).

²⁷ Iowa Code §229A.5(1).

²⁸ *Atwood v. Vilsack*, 725 N.W.2d 641, 652 (Iowa 2006).

²⁹ Iowa Code §229A.5(2).

³⁰ Iowa Code §229A.5(2).

³¹ Iowa Code §229A.5(2).

³² Iowa Code §229A.5(3).

³³ Iowa Code section 229A.5(5). Iowa Code §229A.2(2) defines "appropriate secure facility" as a state facility that is designed to confine but not necessarily treat sexually violent predators.

³⁴ Iowa Code §229A.7(3).

³⁵ Iowa Code §229A.7(3).

³⁶ *In re Detention of Fowler*, 784 N.W.2d 184, 192 (Iowa 2010).

³⁷ Iowa Code §229A.6(2).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

the state is responsible for compensating the expert.³⁸ The state may also examine witnesses under oath prior to the trial.³⁹ A person is entitled to a jury trial to determine if the person is a sexually violent predator.⁴⁰ However, the judge or the Attorney General may demand a jury trial if the person chooses not to make such a demand.⁴¹ The jury shall consist of eight members, the same number as are seated in other civil trials.⁴² At trial, the state carries the burden of proof, which must be beyond a reasonable doubt, for the determination that the person is a sexually violent predator and the Iowa Rules of Civil Procedure and Evidence are applicable.⁴³ At trial, the Court must admit, and the fact finder may rely on, the findings of an administrative parole judge or other agency fact finder.⁴⁴ The determination must be unanimous if tried before a jury.⁴⁵ If the Court or jury determines that the person is a sexually violent predator, the person is then committed to the custody of the Director of Human Services for control, care, and treatment.⁴⁶ If the Court or jury determines that the person is not a sexually violent predator, then the Court shall order the person to be released.⁴⁷

B. Control, Care, and Treatment

Once committed, the person is subject to the Department of Human Services' control, care, and treatment until it is determined that the person is safe to be placed in a transitional release program or discharged.⁴⁸ A person committed as a sexually violent predator is confined in a secure facility and is segregated at all times from any other persons under supervision of the department.⁴⁹ Sexually violent predator control, care, and treatment are provided at the Civil Commitment Unit for Sexual Offenders (CCUSO) at Cherokee.⁵⁰ The CCUSO provides a secure environment for the indefinite treatment of sexually violent predators who are believed to be a high risk to reoffend.⁵¹ There are five treatment phases used to measure a person's progress through the Sexually Violent Predator Program.⁵²

- The “orientation and assessment” phase allows the person to become acquainted with staff and develops a clear understanding about the program expectations and rules.
- The “core phase” requires the person to participate in a minimum one-year curriculum of psycho-educational groups designed to teach important concepts and skills fundamental to learning control of sexual impulses and being able to meet needs in prosocial ways.

³⁸ Iowa Code §229A.6(2).

³⁹ Iowa Code §229A.5A(2).

⁴⁰ Iowa Code §229A.7(4).

⁴¹ Iowa Code §229A.7(4).

⁴² In re Detention of Williams, 628 N.W.2d 447, 454 (Iowa 2001).

⁴³ Iowa Code §§229A.7(4), 229A.7(5)(a).

⁴⁴ Iowa Code §229A.7(5)(c).

⁴⁵ Iowa Code §229A.7(5)(a).

⁴⁶ Iowa Code §229A.7(5)(b).

⁴⁷ Iowa Code §229A.7(8).

⁴⁸ Iowa Code §229A.7(5)(b).

⁴⁹ Iowa Code §229A.7(7).

⁵⁰ Iowa Admin. Code 441—1.3(2).

⁵¹ Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, p. 2 (2019), dhs.iowa.gov/mhds/mental/in-patient/ccuso (last visited September 27, 2019).

⁵² Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, p. 2 (2019), dhs.iowa.gov/mhds/mental/in-patient/ccuso (last visited September 27, 2019).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

- The “advanced phase” requires the person to work on applying the principles and concepts learned in the “core phase” and to achieve the goals established for the individualized treatment plan.
- The “honor phase” expects the person to demonstrate a high level of cooperation, insight, motivation, and application of basic principles taught in the program as well as be a model for other persons in the program.
- The “transition phase” allows the person to gradually be given increasing opportunities to go on passes and to live in a progressively less restrictive setting.

The criteria used for advancing through the treatment phases include the following:⁵³

- The one-year curriculum of psycho-educational group classes includes topics such as cognitive skills, victim empathy, relapse prevention, relationship skills, human sexuality, self-esteem, anger management, personal victimization, and families of origin.
- Insight into various factors that contributed to offending behavior.
- Resolution of past traumas and resentments.
- Demonstration of victim empathy and empathy for others.
- Demonstration of satisfactory leisure skills.
- Demonstration of good cognitive coping skills.
- Reduction of deviant arousal as ascertained by two physiological measures.
- Development of a strong relapse prevention plan.
- Demonstration of adequate social and intimacy skills.
- Development of a realistic and positive self-concept.
- Development of good communication and problem-solving skills.
- Motivation for treatment and change.

In addition, in order to advance through the treatment phases, the person must successfully pass a series of polygraph examinations about their sexual deviancy.⁵⁴

C. Annual Review

A rebuttable presumption exists that the commitment of a sexually violent predator should continue.⁵⁵ However, a person committed as a sexually violent predator is entitled to an annual review of the person’s mental abnormality.⁵⁶ The person may retain an expert to perform the examination or, if the person is indigent, the Court may appoint an expert.⁵⁷ The expert’s report shall be provided to the Court that committed the person and the Court then shall conduct an annual review, and if warranted, set a final hearing on the placement status of the committed person.⁵⁸ At the annual review, the person has the burden of proof

⁵³ Iowa Department of Human Services, Civil Commitment Unit for Sexual Offenders, p. 2 (2019), dhs.iowa.gov/mhds/mental/in-patient/ccuso (last visited September 27, 2019).

⁵⁴ *Id.*

⁵⁵ Iowa Code §229A.8(1). The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person may be placed in a transitional release program.

⁵⁶ Iowa Code §229A.8(2). The Iowa Rules of Evidence do not apply to the annual review. See Iowa Code §229A.8(5).

⁵⁷ Iowa Code §229A.8(2).

⁵⁸ Iowa Code §229A.8(3). The annual review may be based solely on written records.



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

to prove by a preponderance of evidence that a final hearing should be held to determine that either the mental abnormality of the committed person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or the person is suitable for placement in a transitional release program.⁵⁹ If the person shows by a preponderance of the evidence that a final hearing should be held, the Court shall set a final hearing within 60 days of the determination to hold the hearing and the burden of proof shifts to the state at the final hearing.⁶⁰ The committed person may waive the 60-day final hearing requirement; however, the committed person or the attorney for the committed person may reassert a demand that the final hearing be held within 60 days from the date of filing the demand with the clerk of court.⁶¹ The final hearing may be continued upon request of either party and a showing of good cause, or by the Court on its own motion if the committed person is not substantially prejudiced. In determining what constitutes good cause, the Court shall consider the length of the pretrial detention of the committed person.⁶²

D. Final Hearing

If the annual review results in the Court setting a final hearing, the committed person is entitled to an attorney at the final hearing and has all the constitutional protections that were given the person at the original commitment proceeding, including a jury trial if a jury demand is made at least 10 days before the final hearing.⁶³ The Attorney General represents the state at the final hearing and also has the right to demand a jury trial at least 10 days before the final hearing.⁶⁴ The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged, or is not suitable for placement in a transitional release program.⁶⁵ If a mistrial is declared, the confinement or placement status of the person does not change.⁶⁶ After a mistrial has been declared, a new trial must be held within 90 days of the mistrial.⁶⁷ The state and the person may stipulate to a transfer of the person to a transitional release program if the Court approves the stipulation.⁶⁸

⁵⁹ Iowa Code §229A.8(5)(e)(1).

⁶⁰ Iowa Code §229A.8(5)(e)(2)(a). See *In re Detention of Johnson*, 805 N.W.2d 750, (Iowa 2011) requiring the final hearing to be held within 60 days of the Court determining a final hearing should be held and for the civil remedies available for failing to hold the final hearing within 60 days of the determination. See also Iowa Code section 229A.8(6)(d) for the shift in the burden of proof at the final hearing.

⁶¹ Iowa Code §229A.8(5)(e)(2)(b).

⁶² Iowa Code §229A.8(5)(e)(2)(c).

⁶³ Iowa Code §229A.8(6)(a).

⁶⁴ Iowa Code §229A.8(6)(c).

⁶⁵ Iowa Code §229A.8(6)(d). During the final hearing, if the Director of Human Services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the Court, testimony by a victim may be admitted. See Iowa Code §229A.8(6)(e).

⁶⁶ Iowa Code §229A.8(6)(f).

⁶⁷ Iowa Code §229A.8(6)(f).

⁶⁸ Iowa Code §229A.8(7).

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS



E. Petition for Discharge or Placement in a Transitional Release Program

1. With Authorization

The Director of Human Services may authorize a petition for discharge or placement of a committed person in a transitional release program.⁶⁹ If, at the time of the annual review, the person has filed a petition for discharge or placement in a transitional release program with authorization from the director, the Court shall order a final hearing within 90 days of the authorization and an annual review is not held.⁷⁰ However, if no annual review has been scheduled and the director authorizes the person to file a petition for discharge or placement in a transitional release program, the Court shall order a final hearing within 30 days of receipt of the petition.⁷¹

2. Without Authorization

If the person files a petition for a discharge or placement in a transitional release program without authorization at the time of the annual review, the Court must first conduct the annual review.⁷² Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the Court must, if possible, review the petition and determine if the petition is based upon frivolous grounds.⁷³ If the Court determines that a petition is frivolous, the Court must dismiss the petition without a hearing.⁷⁴ In order for the Court to order a final hearing on the petition for discharge or placement in a transitional release program, the person must first prove by a preponderance of the evidence that there is evidence to rebut the presumption of continued commitment, which would lead a reasonable person to believe a final hearing should be held to determine that either the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or that the person is suitable for placement in a transitional release program.⁷⁵ If the person shows by a preponderance of the evidence that a final hearing should be held, the Court shall order a final hearing within 60 days of the determination to hold the hearing and the burden of proof shifts to the state at such a hearing.⁷⁶

F. Transitional Release

Transitional release means a conditional release from a DHS secure facility with the conditions of such release set by the Court or the department.⁷⁷ Placement of a committed person in a transitional release program is appropriate if all of the following apply:⁷⁸

- The person's mental abnormality is no longer such that the person is a high risk to reoffend.

⁶⁹ Iowa Code §229A.10. "Discharge" means an unconditional discharge from the Sexually Violent Predator Program. See Iowa Code §229A.2(4). "Transitional release" means a conditional release from a secure facility operated by the Department of Human Services with the conditions of such release set by the Court or the department. See Iowa Code §229A.2(14).

⁷⁰ Iowa Code §229A.8(5)(f).

⁷¹ Iowa Code §229A.10.

⁷² Iowa Code §229A.8(5)(g).

⁷³ Iowa Code §229A.11.

⁷⁴ Iowa Code §229A.11.

⁷⁵ Iowa Code §229A.8(5)(e)(1).

⁷⁶ Iowa Code §229A.8(5)(e)(2)(a). See also Iowa Code §229A.8(6)(d).

⁷⁷ Iowa Code §229A.2(14).

⁷⁸ Iowa Code §229A.8A(2).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

- The person has achieved and demonstrated significant insights into the person's sex offending cycle.
- The person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.
- A detailed lapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the person's mental abnormality and sex offending history.
- No major discipline reports have been issued for the person for a period of six months.
- The person is not likely to escape or attempt to escape.
- The person is not likely to commit predatory acts constituting sexually violent offenses.
- The placement is in the best interest of the person.
- The person has demonstrated a willingness to agree to abide by the rules of the program.

A committed person placed in a transitional release program must also register as a sex offender as provided in Iowa Code chapter 692A.⁷⁹ A person placed in a transitional release program may be returned to the secure facility by the treatment staff in the program.⁸⁰ If a person is returned to the secure facility, the Director of Human Services or the director's designee is required to notify the district court that an alleged violation of the program's rules has occurred and a hearing is held to determine if a violation has occurred.⁸¹ The burden is on the state at the hearing to show by a preponderance of the evidence that a violation occurred.⁸² If the Court determines a violation has occurred, the Court may place the person back into the transitional release program with further restrictions or order the person returned to the secure facility.⁸³ If the Court determines no violation occurred, the person shall be returned to the transitional release program.⁸⁴

G. Release with Supervision

The law provides an option for release of a committed person with supervision while maintaining Court jurisdiction over the person. Release of a person from the secure facility or a transitional release program is appropriate if any of the following apply:⁸⁵

- The Attorney General stipulates to the release.
- The Court or a jury has determined that the person should be released from a secure facility, but the Court has determined that the person suffers from a mental abnormality and it is in the best interests of the community to order release with supervision before the person is discharged.

⁷⁹ Iowa Code §229A.8A(4).

⁸⁰ Iowa Code §229A.8B(1).

⁸¹ Iowa Code §229A.8B(3).

⁸² Iowa Code §229A.8B(4).

⁸³ Iowa Code §229A.8B(5).

⁸⁴ Iowa Code §229A.8B(5).

⁸⁵ Iowa Code §229A.9A(1)



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

A person may not petition the Court for release with supervision.⁸⁶ If release with supervision is ordered, the Department of Human Services prepares, within 60 days of the order of the Court, a release plan addressing the committed person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug treatment, sex offender treatment, or any other treatment which may be necessary.⁸⁷ If the person is released with supervision, an agency with jurisdiction that is familiar with the placement of criminals in the community must supervise the committed person.⁸⁸ If the committed person violates the release plan, the agency supervising the person is responsible for initiating any Court proceedings against the person.⁸⁹ The burden is on the state to show by a preponderance of the evidence that a violation of the release plan has occurred.⁹⁰ If the Court finds the committed person violated the release plan, the Court may order the person to be confined in a secure facility, place the person in the transitional release program, or rerelease the person with supervision.⁹¹

V. Criminal Offenses Committed While in Custody

A person who is detained to determine whether probable cause exists to believe the person is a sexually violent predator, designated a "safekeeper," or who has been committed as a sexually violent predator remains in custody unless released by court order or discharged.⁹² If a safekeeper or a person who has been committed as a sexually violent predator escapes from custody, the person commits a simple misdemeanor or may be subject to punishment for contempt.⁹³ If the person commits any criminal offense, the civil commitment proceeding or the treatment process is suspended until the criminal proceedings are completed.⁹⁴ Upon the filing of a criminal complaint, indictment, or information, the person is transferred to the county jail in the county where the criminal offense occurred and, if the person is sentenced to prison, the person serves the sentence at a correctional institution.⁹⁵ A person subject to an order of civil commitment shall not be paroled or otherwise released after serving a sentence for the commission of a crime other than to the secure facility operated by the Department of Human Services.⁹⁶ If a person who has been placed in a transitional release program, released with supervision, or discharged pursuant to Iowa Code chapter 229A subsequently is convicted of a sexually predatory or sexually violent offense, the person shall be sentenced to life in prison on the same terms as a class "A" felon.⁹⁷ However, if the person commits a sexually violent offense which is a misdemeanor offense under Iowa Code chapter 709,

⁸⁶ Iowa Code §229A.9A(5).

⁸⁷ Iowa Code §229A.9A(2).

⁸⁸ Iowa Code §229A.9A(4).

⁸⁹ Iowa Code §229A.9A(4).

⁹⁰ Iowa Code §229A.9B(4).

⁹¹ Iowa Code §229A.9B(5).

⁹² Iowa Code §§229A.5, 229A.7(5). "Safekeeper" means a person who is confined in an appropriate secure facility but who is not subject to an order of commitment. Iowa Code §229A.2(10).

⁹³ Iowa Code section 229A.5B(2) defines "escape" to include any person in custody who leaves or attempts to leave a facility without authorization, any knowing or voluntary absence from a place where the person is required to be present, or any escape or attempt to escape custody while being transported by facility personnel.

⁹⁴ Iowa Code §229A.5C(1).

⁹⁵ Iowa Code §229A.5C(2).

⁹⁶ Iowa Code §229A.5C(3).

⁹⁷ Iowa Code §901A.2(6). If the person commits a misdemeanor offense under Iowa Code chapter 709, the person shall be sentenced to life in prison with the possibility of parole. See Iowa Code §901A.2(6).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

the person shall be sentenced to life in prison, with eligibility for parole as provided in Iowa Code chapter 906.⁹⁸

VI. Constitutional Issues

The constitutionality of Iowa's Sexually Violent Predator Act has been upheld by the Iowa Supreme Court.⁹⁹ The United States Supreme Court has also affirmed the landmark *Kansas v. Hendricks* case.¹⁰⁰ The factor that seems to be the basis for upholding the constitutionality of sexually violent predator commitment statutes is the fact that the commitment process is deemed to be civil in nature; thus many of the constitutional safeguards that apply in criminal cases do not apply to a person committed as a sexually violent predator.¹⁰¹ The Iowa Supreme Court has concluded that Iowa's Sexually Violent Predator Act is civil and not criminal.¹⁰² In determining whether a statute is criminal or civil, the Court stated it first must decide whether the:

...[legislature] in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, where [the legislature] has indicated an intention to establish a civil penalty, [the Court] inquire[s] further whether the statutory scheme [is] so punitive either in purpose or effect as to negate that intention.¹⁰³

In order to ascertain the punitive nature of a statute, the Court then must consider the following factors:

[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it and whether it appears excessive in relation to the alternative purpose assigned....¹⁰⁴

The Court will not override legislative intent to interpret a statute as criminal unless there is clear proof it is not civil in nature.¹⁰⁵

Double Jeopardy

The courts have ruled that sexually violent predator commitment statutes do not violate the Double Jeopardy Clause of the United States or the Iowa Constitution.¹⁰⁶ The Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that can be described as punishment.¹⁰⁷ Rather, the prohibition of double jeopardy applies only to criminal cases, and since it has been determined that the Iowa Act is civil in nature, the commitment of a sexually violent predator is not a second prosecution for the same crime.¹⁰⁸

Ex Post Facto

⁹⁸ *Morrow*, 616 N.W. 2d at 549; *Garren*, 620 N.W. 2d at 284.

⁹⁹ *Id.*

¹⁰⁰ *Seling v. Young*, 531 U.S. 250, 260 (2001).

¹⁰¹ *Id.* *Garren*, 620 N.W. 2d at 283.

¹⁰² *Garren*, 620 N.W. 2d at 283.

¹⁰³ *Id.* at 278, quoting *United States v. Ward*, 448 U.S. 242, 248 (1980).

¹⁰⁴ *Id.* at 278, quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963).

¹⁰⁵ *Hudson v. United States*, 522 U.S. 93, 100 (1997); *Garren*, 620 N.W. 2d at 278.

¹⁰⁶ *Seling*, 531 U.S. at 259; *Garren*, 620 N.W. 2d at 284.

¹⁰⁷ *Hudson*, 522 U.S. at 103.

¹⁰⁸ *Garren*, 620 N.W. 2d at 283-284.

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS



The Iowa sexually violent predator commitment statutes do not violate the Ex Post Facto Clause of the United States or the Iowa Constitution because the statutes are considered civil in nature; thus, the statutes do not retroactively punish a person for conduct prior to the effective date of the statutes.¹⁰⁹

Equal Protection

The Iowa Supreme Court has rejected the claim that the Iowa Act violates the Equal Protection Clauses of the United States and Iowa Constitutions.¹¹⁰ The United States and Iowa Constitutions both require that similarly situated persons be treated alike under the law.¹¹¹ The Court found that the distinction drawn between a person civilly committed for having a serious mental impairment under Iowa Code chapter 229 as opposed to Iowa Code chapter 229A is rationally related to the state's interest in protecting the public while effectively treating sexually violent predators who have been unamenable to existing mental illness treatment.¹¹² According to the Court, classification does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations.¹¹³

Due Process

The courts have so far also rejected claims that sexually violent predator commitment statutes violate the Due Process Clauses of the United States and Iowa Constitutions.¹¹⁴ In both constitutions, this clause provides that no person shall be denied life, liberty, or property without due process of law.¹¹⁵ The United States Supreme Court in *Hendricks* held that even though freedom from restraint has always been at the core of the liberty protected by the Due Process Clause, an individual's constitutionally protected interest in avoiding physical restraint may be overridden even in the civil context.¹¹⁶ In determining what process is due when faced with the loss of a right, the Iowa Supreme Court has set out the following factors that must be considered: (1) the private interest affected, (2) the state's interest, and (3) the risk of erroneous deprivation of the individual's interest under the process, and the value of additional or different safeguards in that process.¹¹⁷

The Iowa Supreme Court has found that transitional release under Iowa Code section 229A.8 and release with supervision under Iowa Code section 229A.9A does not violate the Due Process Clauses of the Iowa and the United States Constitutions as long as the person continues to suffer from a mental abnormality, the testimony supports the need for supervision, and the supervision strikes the right balance between the need to protect the community and the person's liberty interest.¹¹⁸

Summary of Constitutional Issues

The United States Supreme Court in *Seling v. Young* noted that persons committed under a sexually violent predator commitment statute may have legitimate claims in state

¹⁰⁹ *Seling*, 531 U.S. at 260; *Garren*, 620 N.W. 2d at 283.

¹¹⁰ *Garren*, 620 N.W. 2d at 286.

¹¹¹ *Williams*, 628 N.W. 2d at 452.

¹¹² *Id.* at 454. Iowa Code chapter 229 is the civil commitment chapter for persons with a mental illness, while Iowa Code chapter 229A is the civil commitment chapter for sexually violent predators.

¹¹³ *Morrow*, 616 N.W. 2d at 548.

¹¹⁴ *Hendricks*, 521 U.S. at 353; *Garren*, 620 N.W. 2d at 286.

¹¹⁵ *Garren*, 620 N.W. 2d at 284-285.

¹¹⁶ *Hendricks*, 521 U.S. at 346.

¹¹⁷ *Williams*, 628 N.W. 2d at 458.

¹¹⁸ *In re Detention of Matlock*, 860 N.W.2d 898 (Iowa 2015).



CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

court regarding the conditions and treatment methods administered by a sexually violent predator program.¹¹⁹ The Court further stated that it is a question of state law whether the Sexually Violent Predator Program is operating in accordance with state law and whether any appropriate remedy should be provided.¹²⁰

Under the Court opinions, it appears that if the state does not continue to adequately treat the person as mandated by the sexually violent predator commitment statute and it just warehouses the individuals, the statute could be interpreted as punitive in nature and be deemed unconstitutional.

VII. Summary

This Legislative Guide provides an overview of Iowa's Sexually Violent Predator Act found in Iowa Code chapter 229A. The overview addresses who is eligible for civil commitment as a sexually violent predator, the process of civilly committing the person, what type of control, care, and treatment methods are used, how a person is released from commitment, and the constitutional issues that relate to the implementation of the Act.

A person may be committed as a sexually violent predator if a person has been previously convicted or charged with a sexually violent offense and suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.

A person is entitled to have a jury make the determination that the person is a sexually violent predator. Prior to this determination, and after a finding of probable cause, a person is held as a safekeeper until the determination is made whether the person is a sexually violent predator. If a determination is made that the person is a sexually violent predator, the person is committed for control, care, and treatment to the Sexually Violent Predator Program operated by the Department of Human Services. After commitment, a sexually violent predator is entitled to an annual examination of the person's mental abnormality.

Discharge from the Sexually Violent Predator Program or placement in a transitional release program can be initiated three different ways. First, the Director of Human Services may authorize a sexually violent predator to petition for discharge or placement in a transitional release program. Second, a person may petition for discharge or placement in a transitional release program without authorization from the Director of Human Services. Third, at the annual review the person proves by a preponderance of the evidence that the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or the person is suitable for placement in a transitional release program.

A person can be placed in a transitional release program or released with supervision without being discharged from the Sexually Violent Predator Program.

¹¹⁹ Seling, 522 U.S. at 265-266.

¹²⁰ Seling, 522 U.S. at 265.