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JUDICIARY

HOUSE FILE 2100  
BY MASCHER, DODERER, and  
MYERS

(COMPANION TO SF 2031  
BY DVORSKY)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to sexually violent predators.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2100

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

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

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

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

31 As used in this chapter:

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

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

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

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

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

14 5. "Sexually violent offense" means:

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

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

19 (1) Murder as defined in section 707.1.

20 (2) Kidnapping as defined in section 710.1.

21 (3) Burglary as defined in section 713.1.

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

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

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

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

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

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

1 reasonable doubt to have been sexually motivated.

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

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

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

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

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

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

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

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

1 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 c. To appear in person at the hearing.

26 d. To be represented by counsel.

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

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

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

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

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

1 an order which does both of the following:

2 a. Verifies the respondent's identity.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 If the director of human services determines that the

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

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

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

1 the petition without a hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 Any psychological reports, drug and alcohol reports,

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

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

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

9

EXPLANATION

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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**HOUSE FILE 2100  
FISCAL NOTE**

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A fiscal note for House File 2100 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 2100 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 Bill 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 HF 2100 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 million in FY 2000.

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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 3007hh, DAA)

FILED FEBRUARY 18, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

## HOUSE FILE 2101

H-8565

1 Amend House File 2101 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. Section 99D.11, subsection 7, Code  
5 1997, is amended to read as follows:

6 7. A person under the age of twenty-one years  
7 shall not make or attempt to make a pari-mutuel wager.

8 A person who violates this subsection commits a  
9 scheduled violation under section 805.8, subsection  
10 13.

11 Sec. 2. Section 99E.18, Code 1997, is amended by  
12 adding the following new subsection:

13 NEW SUBSECTION. 5. A person under the age of  
14 twenty-one years shall not purchase or attempt to  
15 purchase a ticket or share. A person who violates  
16 this subsection commits a scheduled violation under  
17 section 805.8, subsection 13.

18 Sec. 3. Section 99F.4A, Code 1997, is amended by  
19 adding the following new subsection:

20 NEW SUBSECTION. 8. The total number of licenses  
21 to conduct gambling games at pari-mutuel racetracks  
22 pursuant to subsection 2 shall not exceed three until  
23 July 1, 2003.

24 Sec. 4. NEW SECTION. 99F.5A MORATORIUM FOR  
25 ISSUANCE OF LICENSES FOR EXCURSION GAMBLING BOATS.

26 1. The total number of licenses issued to conduct  
27 gambling games on excursion gambling boats pursuant to  
28 this chapter shall not exceed ten until July 1, 2003.

29 2. Notwithstanding subsection 1, the following  
30 actions may be taken during the moratorium from July  
31 1, 1998, until July 1, 2003, with the approval of the  
32 commission:

33 a. A licensed excursion gambling boat may move to  
34 a new location within the same county.

35 b. A licensed excursion gambling boat and its  
36 facilities may be sold and a new license may be issued  
37 for operation in the same county.

38 c. If a license to conduct gambling games on an  
39 excursion gambling boat is surrendered, not renewed,  
40 or revoked, a new license may be issued for operation  
41 in the same county.

42 Sec. 5. Section 99F.7, subsection 1, Code 1997, is  
43 amended to read as follows:

44 1. If the commission is satisfied that this  
45 chapter and its rules adopted under this chapter  
46 applicable to licensees have been or will be complied  
47 with, the commission shall issue a license for a  
48 period of not more than three years to an applicant to  
49 own a gambling game operation and to an applicant to  
50 operate an excursion gambling boat. The commission

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1 shall decide which of the gambling games authorized  
2 under this chapter it will permit. The commission  
3 shall decide the number, location, and type of  
4 excursion gambling boats licensed under this chapter  
5 for operation on the rivers, lakes, and reservoirs of  
6 this state. However, after July 1, 2003, the  
7 commission shall issue a new license for an excursion  
8 gambling boat operation only if the excursion gambling  
9 boat operates on the Mississippi or Missouri river.  
10 The license shall set forth the name of the licensee,  
11 the type of license granted, the place where the  
12 excursion gambling boats will operate and dock, and  
13 the time and number of days during the excursion  
14 season and the off season when gambling may be  
15 conducted by the licensee. The commission shall not  
16 allow a licensee to conduct gambling games on an  
17 excursion gambling boat while docked during the off  
18 season if the licensee does not operate gambling  
19 excursions for a minimum number of days during the  
20 excursion season. The commission may delay the  
21 commencement of the excursion season at the request of  
22 a licensee.

23 Sec. 6. Section 99F.9, subsection 5, Code 1997, is  
24 amended to read as follows:

25 5. A person under the age of twenty-one years  
26 shall not attempt to make or make a wager on an  
27 excursion gambling boat or in a racetrack enclosure  
28 and shall not be-allowed-in enter the area of the  
29 excursion gambling boat or racetrack enclosure where  
30 gambling is being conducted. However, a person  
31 eighteen years of age or older may be employed to work  
32 in-a-gambling-area on an excursion gambling boat or a  
33 racetrack enclosure. A person who violates this  
34 subsection with respect to a wager commits a scheduled  
35 violation under section 805.8, subsection 13.

36 Sec. 7. Section 99F.9, Code 1997, is amended by  
37 adding the following new subsection:

38 NEW SUBSECTION. 7. A licensee shall not permit  
39 the operation of a satellite terminal as defined in  
40 section 527.2 to dispense cash or credit for gambling  
41 purposes on an excursion gambling boat or within a  
42 racetrack enclosure except in nongaming areas as  
43 designated by the commission. The commission may  
44 assess a civil penalty for a violation of this  
45 subsection.

46 Sec. 8. Section 805.8, Code Supplement 1997, is  
47 amended by adding the following new subsection:

48 NEW SUBSECTION. 13. GAMBLING VIOLATIONS. For  
49 violations of legal age for gambling or pari-mutuel  
50 wagering under section 99D.11, subsection 7, section

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1 99E.18, subsection 5, or section 99F.9, subsection 5,  
2 the scheduled fine is one hundred dollars. Failure to  
3 pay the fine by a person under the age of eighteen  
4 shall not result in the person being detained in a  
5 secure facility."

6 2. Title page, by striking lines 1 through 5 and  
7 inserting the following: "An Act relating to gambling  
8 by imposing a moratorium on new licenses to conduct  
9 gambling on excursion gambling boats and at pari-  
10 mutuel racetracks with gambling games, limiting the  
11 location of future excursion gambling boats,  
12 prohibiting gambling licensees from allowing the  
13 loaning of money by credit card or other electronic  
14 means for gambling purposes, and imposing a scheduled  
15 fine for gambling by persons under twenty-one years of  
16 age."

By MARTIN of Scott

H-8565 FILED MARCH 23, 1998

*A. Dayton*  
3/24/98  
(P887)



HOUSE FILE 2101

H-8347

1 Amend House File 2101 as follows:  
2 1. Page 1, by inserting before line 1 the  
3 following:  
4 "Section 1. Section 99F.4A, Code 1997, is amended  
5 by adding the following new subsection:  
6 NEW SUBSECTION. 8. If a license issued pursuant  
7 to this chapter or chapter 99D is transferred, an  
8 existing collective bargaining agreement or the impact  
9 of an employee representation election shall transfer  
10 to the new licensee."

By TAYLOR of Linn

H-8347 FILED MARCH 11, 1998

HOUSE FILE 2101

H-8157

1 Amend the Committee amendment, H-8127, to House  
2 File 2101 as follows:  
3 1. Page 1, line 29, by striking the word "and"  
4 and inserting the following: "or".  
By CHIODO of Polk HANSEN of Pottawattamie  
JACOBS of Polk GIPP of Winneshiek  
VAN FOSSEN of Scott DRAKE of Pottawattamie  
NELSON of Marshall TAYLOR of Linn  
CHURCHILL of Polk CATALDO of Polk  
BERNAU of Story BRADLEY of Clinton  
JOCHUM of Dubuque WHITEAD of Woodbury  
BURNETT of Story HOLMES of Scott  
CONNORS of Polk TYRRELL of Iowa  
LARKIN of Lee

H-8157 FILED MARCH 3, 1998

## HOUSE FILE 2101

H-8127

1 Amend House File 2101 as follows:

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

4 "Section 1. Section 99D.8, Code 1997, is amended  
5 by adding the following new unnumbered paragraph:  
6 NEW UNNUMBERED PARAGRAPH. The total number of  
7 licenses issued to conduct pari-mutuel wagering at a  
8 dog or horse racetrack shall not exceed four until  
9 July 1, 2003. However, with approval of the  
10 commission, if a license to conduct pari-mutuel  
11 wagering at a dog or horse racetrack is surrendered,  
12 not renewed, or revoked, a new license may be issued  
13 for operation in the same county.

14 Sec. \_\_\_\_ . Section 99F.4A, subsection 2, Code 1997,  
15 is amended to read as follows:

16 2. A license to operate gambling games shall be  
17 issued only to a licensee holding a valid license to  
18 conduct pari-mutuel dog or horse racing pursuant to  
19 chapter 99D on January 17, 1994. However, with  
20 approval of the commission, if a license to conduct  
21 gambling games within a pari-mutuel dog or horse  
22 racetrack enclosure is surrendered, not renewed, or  
23 revoked, a new license may be issued for operation in  
24 the same county.

25 Sec. \_\_\_\_ . Section 99F.4A, Code 1997, is amended by  
26 adding the following new subsection:

27 NEW SUBSECTION. 8. a. An official shall not  
28 participate in, or receive directly or indirectly any  
29 money or valuable thing from horse racing and pari-  
30 mutuel wagering on public property which has been  
31 approved by the state racing and gaming commission for  
32 gambling activities.

33 b. As used in this subsection, "official" means  
34 one or more of the following:

35 (1) A member of the county board of supervisors of  
36 a county that owns the approved public property.

37 (2) A mayor or a member of a city council or  
38 commission of a city that owns the approved public  
39 property.

40 (3) A member of the board of directors of a  
41 nonprofit corporation having an agreement with a  
42 county board of supervisors or city council or  
43 commission for the use of approved public property  
44 under a license issued by the state racing and gaming  
45 commission.

46 (4) A spouse or child of a person described in  
47 subparagraph (1), (2), or (3).

48 c. An official who knowingly violates the  
49 provisions of paragraph "a" is guilty of a serious  
50 misdemeanor and may be removed from public office or

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1 as an officer or director of an affected nonprofit  
2 corporation."

3 2. Page 1, by striking lines 18 through 26.

4 3. Title page, lines 1 through 3, by striking the  
5 words "the number and types of gambling games and slot  
6 machines authorized in this state and on".

7 4. Title page, line 4, by inserting after the  
8 word "boats" the following: "and at racetracks, by  
9 removing certain licensee restrictions, prohibiting  
10 certain conflicts of interest,".

11 5. By renumbering, relettering, or redesignating  
12 and correcting internal references as necessary.

By COMMITTEE ON STATE GOVERNMENT  
MARTIN of Scott, Chairperson

H-8127 FILED FEBRUARY 26, 1998

## HOUSE FILE 2101

H-8151

1 Amend the Committee amendment, H-8127, to House  
2 File 2101 as follows:

3 1. By striking page 1, line 24, through page 2,  
4 line 2, and inserting the following: "the same  
5 county."

6 2. Page 2, by striking lines 9 and 10 and  
7 inserting the following: "removing certain licensee  
8 restrictions,".

By O'BRIEN of Boone

H-8151 FILED MARCH 2, 1998

## HOUSE FILE 2101

H-8155

1 Amend the Committee amendment, H-8127, to House  
2 File 2101 as follows:

3 1. Page 1, by inserting after line 24 the  
4 following:

5 "Sec. \_\_\_\_ . Section 99F.4A, Code 1997, is amended  
6 by adding the following new subsection:  
7 NEW SUBSECTION. 7A. A licensee's expenses for  
8 marketing, educational, and informational material  
9 relating to an excursion gambling boat or a pair-  
10 mutuel racetrack including gambling games shall not  
11 exceed four million dollars annually. The telephone  
12 number, 1-800-BETS-OFF, shall be prominently displayed  
13 at all gambling facilities regulated by the  
14 commission."

15 2. Page 2, line 8, by inserting after the word  
16 "racetracks," the following: "by restricting  
17 advertising costs,".

18 3. By renumbering as necessary.

By CHIODO of Polk

H-8155 FILED MARCH 2, 1998