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SSB-3135
Judiciary

Succeeded By
SENATE FILE 01HF 2250
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MCKEAN)

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

A BILL FOR

1 An Act relating to the civil commitment of dangerously violent
2 persons.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 13B.4, subsection 1, Code Supplement
2 1999, is amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, seeking postconviction relief,
6 against whom a contempt action is pending, in proceedings
7 under chapter 229A or 229B, on appeal in criminal cases, on
8 appeal in proceedings to obtain postconviction relief when
9 ordered to do so by the district court in which the judgment
10 or order was issued, and on a reopening of a sentence
11 proceeding, and may provide for the representation of
12 indigents in proceedings instituted pursuant to chapter 908.
13 The state public defender shall not engage in the private
14 practice of law.

15 Sec. 2. NEW SECTION. 229B.1 LEGISLATIVE FINDINGS.

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

35 The general assembly further finds that the prognosis for

1 rehabilitating dangerously violent persons in a prison setting
 2 is poor, because the treatment needs of, and the treatment
 3 modalities for, this population are very different from the
 4 traditional treatment modalities available in a prison setting
 5 or for persons appropriate for commitment under chapter 229.
 6 Therefore, the general assembly finds that a civil commitment
 7 procedure for long-term care and treatment of dangerously
 8 violent persons is necessary.

9 Sec. 3. NEW SECTION. 229B.2 DEFINITIONS.

10 As used in this chapter:

11 1. "Agency with jurisdiction" means an agency which has
 12 custody of or releases a person serving a sentence or term of
 13 confinement or is otherwise in confinement based upon a lawful
 14 order or authority, and includes but is not limited to the
 15 department of corrections, the department of human services, a
 16 judicial district department of correctional services, and the
 17 Iowa board of parole.

18 2. "Appropriate secure facility" means a state facility
 19 that is designed to confine but not necessarily to treat a
 20 dangerously violent person.

21 3. "Likely to engage in violent acts" means that the
 22 person more likely than not will engage in acts which are
 23 violent offenses. If a person is not confined at the time
 24 that a petition is filed, a person is "likely to engage in
 25 violent acts" only if the person commits a recent overt act.

26 4. "Mental abnormality" means a congenital or acquired
 27 condition affecting the emotional or volitional capacity of a
 28 person and predisposing that person to commit violent offenses
 29 to a degree which would constitute a menace to the health and
 30 safety of others.

31 5. "Motivated by violence" means that one of the purposes
 32 for commission of a crime is the purpose of gratifying oneself
 33 through an act of violence.

34 6. "Recent overt act" means any act of a violent nature
 that has either caused harm or creates a reasonable

1 apprehension of such harm.

2 7. "Violent offense" means:

3 a. A forcible felony that is not a sexually violent
4 offense defined under chapter 229A.

5 b. An offense involving an attempt or conspiracy to commit
6 any offense referred to in this subsection.

7 c. An offense under prior law of this state or an offense
8 committed in another jurisdiction which would constitute an
9 equivalent offense under this section.

10 8. "Dangerously violent person" means a person who has
11 been convicted of or charged with a violent offense and who
12 suffers from a mental abnormality which makes the person
13 likely to engage in violent acts, if not confined in an
14 appropriate secure facility.

15 Sec. 4. NEW SECTION. 229B.3 NOTICE OF DISCHARGE OF A
16 DANGEROUSLY VIOLENT PERSON -- IMMUNITY FROM LIABILITY --
17 MULTIDISCIPLINARY TEAM -- PROSECUTOR'S REVIEW COMMITTEE --
18 ASSESSMENT OF PERSON.

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

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

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

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

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

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

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

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

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

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

33 Sec. 5. NEW SECTION. 229B.4 PETITION -- TIME --

34 CONTENTS.

1. If it appears that a person presently confined may be a

1 dangerously violent person and the prosecutor's review
2 committee has determined that the person meets the definition
3 of a dangerously violent person, the attorney general may file
4 a petition alleging that the person is a dangerously violent
5 person and stating sufficient facts to support such an
6 allegation.

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

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

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

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

23 Sec. 6. NEW SECTION. 229B.5 PERSON TAKEN INTO CUSTODY --
24 DETERMINATION OF PROBABLE CAUSE -- HEARING -- EVALUATION.

25 1. Upon filing of a petition under section 229B.4, the
26 court shall make a preliminary determination as to whether
27 probable cause exists to believe that the person named in the
28 petition is a dangerously violent person. Upon a preliminary
29 finding of probable cause, the court shall direct that the
30 person named in the petition be taken into custody and that
31 the person be served with a copy of the petition and any
32 supporting documentation and notice of the procedures required
33 by this chapter. If the person is in custody at the time of
34 the filing of the petition, the court shall determine whether
35 a transfer of the person to an appropriate secure facility is

1 appropriate pending the outcome of the proceedings or whether
2 the custody order should be delayed until the date of release
3 of the person.

4 2. Within seventy-two hours after being taken into custody
5 or being transferred to an appropriate secure facility, a
6 hearing shall be held to determine whether probable cause
7 exists to believe the detained person is a dangerously violent
8 person. The hearing may be waived by the respondent. The
9 hearing may be continued upon the request of either party and
10 a showing of good cause, or by the court on its own motion in
11 the due administration of justice, and if the respondent is
12 not substantially prejudiced. At the probable cause hearing,
13 the detained person shall have the following rights:

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

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

18 c. To appear in person at the hearing.

19 d. To be represented by counsel.

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

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

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

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

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

30 a. Verifies the respondent's identity.

31 b. Determines whether probable cause exists to believe
32 that the respondent is a dangerously violent person.

33 5. If the court determines that probable cause does exist,
34 the court shall direct that the respondent be transferred to
35 an appropriate secure facility for an evaluation as to whether

1 the respondent is a dangerously violent person. The
2 evaluation shall be conducted by a person deemed to be
3 professionally qualified to conduct such an examination.

4 Sec. 7. NEW SECTION. 229B.6 POWERS OF INVESTIGATIVE
5 PERSONNEL BEFORE A PETITION IS FILED.

6 1. The prosecuting attorney or attorney general is
7 authorized upon the occurrence of a recent overt act, or upon
8 receiving written notice pursuant to section 229B.3, or before
9 the filing of a petition under this chapter, to subpoena and
10 compel the attendance of witnesses, examine the witnesses
11 under oath, and require the production of documentary evidence
12 for inspection, reproduction, or copying. Except as otherwise
13 provided by this section, the prosecuting attorney or attorney
14 general shall have the same powers and limitations, subject to
15 judicial oversight and enforcement, as provided by this
16 chapter and by the Iowa rules of civil procedure. Any person
17 compelled to appear under a demand for oral testimony under
18 this section may be accompanied, represented, and advised by
19 counsel at the person's own expense.

20 2. The examination of all witnesses under this section
21 shall be conducted by the prosecuting attorney or attorney
22 general before an officer authorized to administer oaths under
23 section 63A.1. The testimony shall be taken by a certified
24 shorthand reporter or by a sound recording device and shall be
25 transcribed or otherwise preserved in the same manner as
26 provided for the preservation of depositions under the Iowa
27 rules of civil procedure. The prosecuting attorney or
28 attorney general may exclude from the examination all persons
29 except the witness, witness's counsel, the officer before whom
30 the testimony is to be taken, law enforcement officials, and a
31 certified shorthand reporter. Prior to oral examination, the
32 person shall be advised by the prosecuting attorney or
33 attorney general of the person's right to refuse to answer any
34 questions on the basis of the privilege against self-
35 incrimination. The examination shall be conducted in a manner

1 consistent with the rules dealing with the taking of
2 depositions.

3 Sec. 8. NEW SECTION. 229B.7 COUNSEL AND EXPERTS --
4 INDIGENT PERSONS.

5 1. A respondent to a petition alleging the person to be a
6 dangerously violent person shall be entitled to the assistance
7 of counsel upon the filing of the petition under section
8 229A.4 and, if the respondent is indigent, the court shall
9 appoint counsel to assist the respondent at state expense.

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

33 Sec. 9. NEW SECTION. 229B.8 TRIAL -- DETERMINATION --
34 COMMITMENT PROCEDURE -- CHAPTER 28E AGREEMENTS -- MISTRIALS.

1. If the person charged with a violent offense has been

1 found incompetent to stand trial and the person is about to be
2 released pursuant to section 812.5, or the person has been
3 found not guilty of a violent offense by reason of insanity,
4 if a petition has been filed seeking the person's commitment
5 under this chapter, the court shall first hear evidence and
6 determine whether the person did commit the act or acts
7 charged. At the hearing on this issue, the rules of evidence
8 applicable in criminal cases shall apply, and all
9 constitutional rights available to defendants at criminal
10 trials, other than the right not to be tried while
11 incompetent, shall apply. After hearing evidence on this
12 issue, the court shall make specific findings on whether the
13 person did commit the act or acts charged, the extent to which
14 the person's incompetence or insanity affected the outcome of
15 the hearing, including its effect on the person's ability to
16 consult with and assist counsel and to testify on the person's
17 own behalf, the extent to which the evidence could be
18 reconstructed without the assistance of the person, and the
19 strength of the prosecution's case. If after the conclusion
20 of the hearing on this issue the court finds, beyond a
21 reasonable doubt, that the person did commit the act or acts
22 charged, the court shall enter a final order, appealable by
23 the person, on that issue, and may proceed to consider whether
24 the person should be committed pursuant to this chapter.

25 2. Within ninety days after either the entry of the order
26 waiving the probable cause hearing or completion of the
27 probable cause hearing held under section 229B.5, the court
28 shall conduct a trial to determine whether the respondent is a
29 dangerously violent person. The trial may be continued upon
30 the request of either party and a showing of good cause, or by
31 the court on its own motion in the due administration of
32 justice, and when the respondent will not be substantially
33 prejudiced. The respondent, the attorney general, or the
34 judge shall have the right to demand that the trial be before
35 a jury. Such demand for the trial to be before a jury shall

1 be filed, in writing, at least ten days prior to trial. The
2 number and selection of jurors shall be determined as provided
3 in chapter 607A. If no demand is made, the trial shall be
4 before the court.

5 3. At trial, the court or jury shall determine whether,
6 beyond a reasonable doubt, the respondent is a dangerously
7 violent person. If the determination that the respondent is a
8 dangerously violent person is made by a jury, the
9 determination shall be by unanimous verdict of such jury.

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

16 4. The control, care, and treatment of a person determined
17 to be a dangerously violent person shall be provided at a
18 facility operated by the department of human services. At all
19 times, persons committed for control, care, and treatment by
20 the department of human services pursuant to this chapter
21 shall be kept in a secure facility and those patients shall be
22 segregated at all times from any other patient under the
23 supervision of the department of human services. A person
24 committed pursuant to this chapter to the custody of the
25 department of human services may be kept in a facility or
26 building separate from any other patient under the supervision
27 of the department of human services. The department of human
28 services may enter into a chapter 28E agreement with the
29 department of corrections or other appropriate agency in this
30 state or another state for the confinement of patients who
31 have been determined to be dangerously violent persons.
32 Patients who are in the confinement of the director of the
33 department of corrections pursuant to a chapter 28E agreement
34 shall be housed and managed separately from criminal offenders
in the custody of the director of the department of

1 corrections, and, except for occasional instances of
2 supervised incidental contact, shall be segregated from those
3 offenders.

4 5. If the court or jury is not satisfied beyond a
5 reasonable doubt that the respondent is a dangerously violent
6 person, the court shall direct the respondent's release. Upon
7 a mistrial, the court shall direct that the respondent be held
8 at an appropriate secure facility until another trial is
9 conducted. Any subsequent trial following a mistrial shall be
10 held within ninety days of the previous trial, unless such
11 subsequent trial is continued as provided in subsection 2.

12 Sec. 10. NEW SECTION. 229B.9 ANNUAL EXAMINATIONS --
13 DISCHARGE PETITIONS BY PERSONS COMMITTED.

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

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

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

34 4. The committed person shall have a right to have an
35 attorney represent the person at the probable cause hearing

1 but the person is not entitled to be present at the hearing.
 2 If the court at the hearing determines that probable cause
 3 exists to believe that the person's mental abnormality has so
 4 changed that the person is safe to be at large and is not
 5 likely to engage in violent acts if discharged, then the court
 6 shall set a final hearing on the issue.

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

22 Sec. 11. NEW SECTION. 229B.10 DETENTION AND COMMITMENT
 23 TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

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

27 Sec. 12. NEW SECTION. 229B.11 PETITION FOR DISCHARGE --
 28 PROCEDURE.

29 1. If the director of human services determines that the
 30 person's mental abnormality has so changed that the person is
 31 not likely to commit violent acts if discharged, the director
 32 shall authorize the person to petition the court for
 33 discharge. The petition shall be served upon the court and
 34 the attorney general. The court, upon receipt of the petition
 for discharge, shall order a hearing within thirty days. The

1 attorney general shall represent the state, and shall have the
2 right to have the petitioner examined by an expert or
3 professional person of the attorney general's choice. The
4 hearing shall be before a jury if demanded by either the
5 petitioner or the attorney general. The burden of proof shall
6 be upon the attorney general to show beyond a reasonable doubt
7 that the petitioner's mental abnormality remains such that the
8 petitioner is not safe to be at large and that if discharged
9 is likely to engage in violent acts.

10 2. Upon a finding that the state has failed to meet its
11 burden of proof under this section, or a stipulation by the
12 state, the court shall authorize the release of the committed
13 person. Release may be ordered with or without supervision.
14 If supervised release is ordered, the department of human
15 services shall prepare a plan addressing the person's needs
16 for counseling, medication, community support services,
17 residential services, vocational services, alcohol and other
18 drug abuse treatment, and any other treatment or supervision
19 necessary. If the court orders the release of the committed
20 person with supervision, the court shall order supervision by
21 an agency with jurisdiction that is familiar with the
22 placement of criminal offenders in the community.

23 Sec. 13. NEW SECTION. 229B.12 SUBSEQUENT DISCHARGE
24 PETITIONS -- LIMITATIONS.

25 Nothing in this chapter shall prohibit a person from filing
26 a petition for discharge at any time pursuant to this chapter.
27 However, if a person has previously filed a petition for
28 discharge without the authorization of the director of human
29 services, and the court determines either upon review of the
30 petition or following a hearing that the petition was
31 frivolous or that the petitioner's condition had not so
32 changed that the person was safe to be at large, then the
33 court shall summarily deny the subsequent petition unless the
34 petition contains facts upon which a court could find the
35 condition of the petitioner had so changed that a hearing was

1 warranted. Upon receipt of a first or subsequent petition
 2 from a committed person without the director's authorization,
 3 the court shall endeavor whenever possible to review the
 4 petition and determine if the petition is based upon frivolous
 5 grounds. If the court determines that a petition is
 6 frivolous, the court shall deny the petition without a
 7 hearing.

8 Sec. 14. NEW SECTION. 229B.13 DIRECTOR OF HUMAN SERVICES
 9 -- RESPONSIBILITY FOR COSTS -- REIMBURSEMENT.

10 The director of human services shall be responsible for all
 11 costs relating to the evaluation, treatment, and services
 12 provided to persons committed to the director's custody after
 13 the court or jury determines that the respondent is a
 14 dangerously violent person and pursuant to an order for
 15 commitment under any provision of this chapter. If
 16 supervision is ordered pursuant to section 229B.11, the
 17 director shall also be responsible for all costs related to
 18 the supervision of any person. Reimbursement may be obtained
 19 by the director from the patient and any person legally liable
 20 or bound by contract for the support of the patient for the
 21 cost of care and treatment provided. As used in this section,
 22 "any person legally liable" does not include a political
 23 subdivision.

24 Sec. 15. NEW SECTION. 229B.14 SEVERABILITY.

25 If any provision of this chapter or the application thereof
 26 to any person or circumstances is held invalid, the invalidity
 27 shall not affect other provisions or applications of the
 28 chapter which can be given effect without the invalid
 29 provisions or application and, to this end, the provisions of
 30 this chapter are severable.

31 Sec. 16. NEW SECTION. 229B.15 RELEASE OF CONFIDENTIAL OR
 32 PRIVILEGED INFORMATION AND RECORDS.

33 Notwithstanding anything in chapter 22 to the contrary,
 34 relevant information and records which would otherwise be
 confidential or privileged shall be released to the agency

1 with jurisdiction or the attorney general for the purpose of
2 meeting the notice requirement provided in section 229B.3 and
3 determining whether a person is or continues to be a
4 dangerously violent person.

5 Sec. 17. NEW SECTION. 229B.16 COURT RECORDS -- SEALED
6 AND OPENED BY COURT ORDER.

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

13 Sec. 18. NEW SECTION. 229B.17 SHORT TITLE.

14 This chapter shall be known and may be cited as the
15 "Dangerously Violent Person Act".

16 Sec. 19. Section 235A.15, subsection 2, paragraph d,
17 subparagraph (6), Code Supplement 1999, is amended to read as
18 follows:

19 (6) To the department of justice for purposes of review by
20 the prosecutor's review committee or the commitment of
21 sexually violent predators as provided in chapter 229A or the
22 commitment of dangerously violent persons as provided in
23 chapter 229B.

24 Sec. 20. Section 235A.15, subsection 3, paragraph d, Code
25 Supplement 1999, is amended to read as follows:

26 d. The department of justice for purposes of review by the
27 prosecutor's review committee or the commitment of sexually
28 violent predators as provided in chapter 229A or the
29 commitment of dangerously violent persons as provided in
30 chapter 229B.

31 Sec. 21. Section 235A.15, subsection 4, paragraph d, Code
32 Supplement 1999, is amended to read as follows:

33 d. The department of justice for purposes of review by the
34 prosecutor's review committee or the commitment of sexually
35 violent predators as provided in chapter 229A or the

1 commitment of dangerously violent persons as provided in
2 chapter 229B.

3 Sec. 22. Section 235A.18, subsection 1, paragraphs a and
4 b, Code Supplement 1999, are amended to read as follows:

5 a. Report and disposition data relating to a particular
6 case of alleged child abuse shall be sealed ten years after
7 the initial placement of the data in the registry unless good
8 cause be shown why the data should remain open to authorized
9 access. If a subsequent report of an alleged case of child
10 abuse involving the child named in the initial data placed in
11 the registry as the victim of abuse or a person named in the
12 data as having abused a child is received by the department
13 within this ten-year period, the data shall be sealed ten
14 years after receipt of the subsequent report unless good cause
15 be shown why the data should remain open to authorized access.
16 However, such report and disposition data shall be made

17 available to the department of justice if the department
18 requests access to the alleged child abuse records for
19 purposes of review by the prosecutor's review committee or
20 commitment of sexually violent predators under chapter 229A or
21 the commitment of dangerously violent persons as provided in
22 chapter 229B.

23 b. Data sealed in accordance with this section shall be
24 expunged eight years after the date the data was sealed.
25 However, if the report data and the disposition data involve
26 child abuse as defined in section 232.68, subsection 2,
27 paragraphs "c" and "e", the data shall not be expunged for a
28 period of thirty years. Sealed data shall be made available
29 to the department of justice upon request if the prosecutor's
30 review committee is reviewing records or if a prosecuting
31 attorney has filed a petition to commit a sexually violent
32 predator under chapter 229A or the commitment of dangerously
33 violent persons as provided in chapter 229B.

34 Sec. 23. Section 815.7, Code Supplement 1999, is amended
35 to read as follows:

1 815.7 FEES TO ATTORNEYS.

2 An attorney who has not entered into a contract authorized
3 under section 13B.4 and who is appointed by the court to
4 represent any person charged with a crime in this state,
5 seeking postconviction relief, against whom a contempt action
6 is pending, appealing a criminal conviction, appealing a
7 denial of postconviction relief, or subject to a proceeding
8 under chapter 229A or 229B, or to serve as counsel for any
9 person or guardian ad litem for any child in juvenile court,
10 shall be entitled to reasonable compensation and expenses.
11 For appointments made on or after July 1, 1999, the reasonable
12 compensation shall be calculated on the basis of sixty dollars
13 per hour for class "A" felonies, fifty-five dollars per hour
14 for class "B" felonies, and fifty dollars per hour for all
15 other offenses. The expenses shall include any sums as are
16 necessary for investigations in the interest of justice, and
17 the cost of obtaining the transcript of the trial record and
18 briefs if an appeal is filed. The attorney need not follow
19 the case into another county or into the appellate court
20 unless so directed by the court. If the attorney follows the
21 case into another county or into the appellate court, the
22 attorney shall be entitled to compensation as provided in this
23 section. Only one attorney fee shall be so awarded in any one
24 case except that in class "A" felony cases, two may be
25 authorized.

26 Sec. 24. Section 815.9, subsection 1, unnumbered paragraph
27 1, Code Supplement 1999, is amended to read as follows:

28 For purposes of this chapter, chapter 13B, chapter 229A,
29 chapter 229B, chapter 232, chapter 665, chapter 814, chapter
30 822, and the rules of criminal procedure, a person is indigent
31 if the person is entitled to an attorney appointed by the
32 court as follows:

33 Sec. 25. Section 815.10, subsection 1, Code Supplement
34 1999, is amended to read as follows:

35 1. The court, for cause and upon its own motion or upon

1 application by an indigent person or a public defender, shall
 2 appoint the state public defender, the state public defender's
 3 designee pursuant to section 13B.4, or an attorney pursuant to
 4 section 13B.9 to represent an indigent person at any stage of
 5 the criminal, postconviction, contempt, commitment under
 6 chapter 229A or 229B, or juvenile proceedings or on appeal of
 7 any criminal, postconviction, contempt, commitment under
 8 chapter 229A or 229B, or juvenile action in which the indigent
 9 person is entitled to legal assistance at public expense.
 10 However, in juvenile cases, the court may directly appoint an
 11 existing nonprofit corporation established for and engaged in
 12 the provision of legal services for juveniles. An appointment
 13 shall not be made unless the person is determined to be
 14 indigent under section 815.9. Only one attorney shall be
 15 appointed in all cases, except that in class "A" felony cases
 16 the court may appoint two attorneys.

17 Sec. 26. Section 815.11, Code Supplement 1999, is amended
 18 to read as follows:

19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

20 Costs incurred under chapter 229A, 229B, 665, or 822, or
 21 section 232.141, subsection 3, paragraph "c", or sections
 22 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10,
 23 or the rules of criminal procedure on behalf of an indigent
 24 shall be paid from funds appropriated by the general assembly
 25 to the department of inspections and appeals for those
 26 purposes.

27 Sec. 27. Section 915.45, Code 1999, is amended to read as
 28 follows:

29 915.45 NOTICE TO VICTIMS OF DISCHARGE OF PERSONS
 30 COMMITTED.

31 In addition to any other information required to be
 32 released under chapter 229A or 229B, prior to the discharge of
 33 a person committed under chapter 229A or 229B, the director of
 34 human services shall give written notice of the person's
 discharge to any living victim of the person's activities or

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

8 EXPLANATION

9 This bill establishes a civil commitment procedure for
10 dangerously violent persons.

11 The bill generally parallels the procedure for the
12 commitment of sexually violent predators. The bill provides
13 that the attorney general or a county attorney may petition to
14 commence commitment proceedings against persons who have been
15 convicted of a violent offense or who have been acquitted of a
16 violent offense by reason of insanity or found incompetent to
17 stand trial for such an offense.

18 The bill provides for the establishment of a
19 multidisciplinary team which will assess whether a person
20 meets the definition of a dangerously violent person. The
21 bill also provides that the attorney general shall appoint a
22 prosecutor's review committee to review records of each person
23 referred to it by an agency with jurisdiction over the person
24 and records of the assessment performed by the
25 multidisciplinary team. The bill provides that the agency
26 with jurisdiction shall give written notice within 90 days of
27 the person's discharge from custody to the attorney general
28 and to the multidisciplinary team. The prosecutor's review
29 committee shall assist the attorney general in determining
30 whether the person referred to the committee meets the
31 definition of a dangerously violent person and whether the
32 person should be civilly committed.

33 A probable cause hearing must be conducted within 72 hours
34 of the filing of a petition. A probable cause hearing may be
35 continued upon a showing of good cause by either party or the

1 court. If the court finds there is probable cause to believe
2 that the person is a dangerously violent person, the court
3 must direct that the person be transferred to an appropriate
4 secure facility and that an evaluation of the person be
5 conducted.

6 Within 90 days of the filing of the petition, a trial must
7 be held on the question of whether the person is to be
8 committed as a dangerously violent person. At trial, the
9 person is entitled to counsel, and has the right to retain and
10 be evaluated by experts of the person's own choosing. Any
11 independent professional who is conducting an evaluation of
12 the person is to have access to all relevant medical and
13 psychological records and reports. At trial, the court or
14 jury if tried before a jury must determine whether there is
15 sufficient evidence to prove beyond a reasonable doubt that
16 the person is a dangerously violent person. If the court or
17 jury determines that there is sufficient evidence, the court
18 must order that the person be placed in an appropriate secure
19 facility under the supervision of the director of the
20 department of human services until the person's mental
21 abnormality has improved to the extent that it is safe to
22 release the person.

23 Under the bill a person committed as a dangerously violent
24 person is to be evaluated on an annual basis to determine the
25 person's mental condition. The court shall conduct an annual
26 review and probable cause hearing on the status of the
27 committed person. After the probable cause hearing, the
28 committed person is entitled to a final hearing about whether
29 there is still sufficient evidence to prove beyond a
30 reasonable doubt that the person is a dangerously violent
31 person and if discharged is likely to engage in violent acts.

32 The bill provides that if the director of human services
33 determines the person's mental abnormality has so changed that
34 the person is not likely to engage in violent acts if
35 discharged, the director shall authorize the person to

1 petition the court for release. Upon receipt of the petition
2 the court shall order a hearing within 30 days and at such
3 hearing the burden of proof shall be on the state to show
4 beyond a reasonable doubt that the person's mental abnormality
5 remains such that the person if discharged is likely to engage
6 in violent acts. If the state has failed to meet its burden
7 of proof, the court may release the person with or without
8 community supervision.

9 Under the bill the person is entitled to petition the court
10 for release at any time. The director of human services must
11 also annually notify the person of the person's right to
12 petition for such release. Although a committed person may
13 petition for release at any time, if the committed person has
14 previously filed a petition for release, and the court has
15 determined that a previous petition was frivolous or that a
16 committed person's condition has not changed sufficiently to
17 warrant release, the court must deny the petition unless new
18 facts are alleged which could support a contrary finding.

19 The bill provides that the department of human services
20 shall be responsible for all costs related to the evaluation,
21 treatment, community supervision if ordered, and services
22 provided to a person committed as a dangerously violent
23 person.

24 The bill provides that a person is entitled to counsel
25 throughout any proceeding under this bill. The bill provides
26 that the state public defender shall coordinate the legal
27 representation of an indigent person during any proceedings.
28 The bill also provides that except for filing a petition and
29 the subsequent trial to commit a dangerously violent person,
30 the attorney general's office is responsible for representing
31 the state's interest. Under the bill a local county attorney
32 may file a petition to commit a person as a dangerously
33 violent person and represent the state's interest during the
34 subsequent trial.

35 The bill provides the attorney general with access to

1 certain child abuse records when determining whether to file a
 2 petition alleging a person is a dangerously violent person for
 3 purposes of committing such a person. In addition, the bill
 4 provides that all founded child abuse records that are sealed
 5 shall still be available to the attorney general for purposes
 6 of the prosecutor's review committee's review of records or
 7 for committing a dangerously violent person. Such sealed data
 8 is to be expunged in 30 years, rather than eight years, after
 9 sealing.

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3/10/00 Sent back to Comm. from Calendar

FILED FEB 22 2000

SENATE FILE

2250

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3135)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the civil commitment of dangerously violent
2 persons.

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

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SF 2250

1 Section 1. Section 13B.4, subsection 1, Code Supplement
2 1999, is amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, seeking postconviction relief,
6 against whom a contempt action is pending, in proceedings
7 under chapter 229A or 229B, on appeal in criminal cases, on
8 appeal in proceedings to obtain postconviction relief when
9 ordered to do so by the district court in which the judgment
10 or order was issued, and on a reopening of a sentence
11 proceeding, and may provide for the representation of
12 indigents in proceedings instituted pursuant to chapter 908.
13 The state public defender shall not engage in the private
14 practice of law.

15 Sec. 2. NEW SECTION. 229B.1 LEGISLATIVE FINDINGS.

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

35 The general assembly further finds that the prognosis for

1 rehabilitating dangerously violent persons in a prison setting
2 is poor, because the treatment needs of, and the treatment
3 modalities for, this population are very different from the
4 traditional treatment modalities available in a prison setting
5 or for persons appropriate for commitment under chapter 229.
6 Therefore, the general assembly finds that a civil commitment
7 procedure for long-term care and treatment of dangerously
8 violent persons is necessary.

9 Sec. 3. NEW SECTION. 229B.2 DEFINITIONS.

10 As used in this chapter:

11 1. "Agency with jurisdiction" means an agency which has
12 custody of or releases a person serving a sentence or term of
13 confinement or is otherwise in confinement based upon a lawful
14 order or authority, and includes but is not limited to the
15 department of corrections, the department of human services, a
16 judicial district department of correctional services, and the
17 Iowa board of parole.

18 2. "Appropriate secure facility" means a state facility
19 that is designed to confine but not necessarily to treat a
20 dangerously violent person.

21 3. "Likely to engage in violent acts" means that the
22 person more likely than not will engage in acts which are
23 violent offenses. If a person is not confined at the time
24 that a petition is filed, a person is "likely to engage in
25 violent acts" only if the person commits a recent overt act.

26 4. "Mental abnormality" means a congenital or acquired
27 condition affecting the emotional or volitional capacity of a
28 person and predisposing that person to commit violent offenses
29 to a degree which would constitute a menace to the health and
30 safety of others.

31 5. "Motivated by violence" means that one of the purposes
32 for commission of a crime is the purpose of gratifying oneself
33 through an act of violence.

34 6. "Recent overt act" means any act of a violent nature
35 that has either caused harm or creates a reasonable

1 apprehension of such harm.

2 7. "Violent offense" means:

3 a. A forcible felony that is not a sexually violent
4 offense defined under chapter 229A.

5 b. An offense involving an attempt or conspiracy to commit
6 any offense referred to in this subsection.

7 c. An offense under prior law of this state or an offense
8 committed in another jurisdiction which would constitute an
9 equivalent offense under this section.

10 8. "Dangerously violent person" means a person who has
11 been convicted of or charged with a violent offense and who
12 suffers from a mental abnormality which makes the person
13 likely to engage in violent acts, if not confined in an
14 appropriate secure facility.

15 Sec. 4. NEW SECTION. 229B.3 NOTICE OF DISCHARGE OF A
16 DANGEROUSLY VIOLENT PERSON -- IMMUNITY FROM LIABILITY --
17 MULTIDISCIPLINARY TEAM -- PROSECUTOR'S REVIEW COMMITTEE --
18 ASSESSMENT OF PERSON.

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

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

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

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

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

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

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

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

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

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

33 Sec. 5. NEW SECTION. 229B.4 PETITION -- TIME --
34 CONTENTS.

35 1. If it appears that a person presently confined may be a

1 dangerously violent person and the prosecutor's review
2 committee has determined that the person meets the definition
3 of a dangerously violent person, the attorney general may file
4 a petition alleging that the person is a dangerously violent
5 person and stating sufficient facts to support such an
6 allegation.

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

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

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

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

23 Sec. 6. NEW SECTION. 229B.5 PERSON TAKEN INTO CUSTODY --
24 DETERMINATION OF PROBABLE CAUSE -- HEARING -- EVALUATION.

25 1. Upon filing of a petition under section 229B.4, the
26 court shall make a preliminary determination as to whether
27 probable cause exists to believe that the person named in the
28 petition is a dangerously violent person. Upon a preliminary
29 finding of probable cause, the court shall direct that the
30 person named in the petition be taken into custody and that
31 the person be served with a copy of the petition and any
32 supporting documentation and notice of the procedures required
33 by this chapter. If the person is in custody at the time of
34 the filing of the petition, the court shall determine whether
35 a transfer of the person to an appropriate secure facility is

1 appropriate pending the outcome of the proceedings or whether
2 the custody order should be delayed until the date of release
3 of the person.

4 2. Within seventy-two hours after being taken into custody
5 or being transferred to an appropriate secure facility, a
6 hearing shall be held to determine whether probable cause
7 exists to believe the detained person is a dangerously violent
8 person. The hearing may be waived by the respondent. The
9 hearing may be continued upon the request of either party and
10 a showing of good cause, or by the court on its own motion in
11 the due administration of justice, and if the respondent is
12 not substantially prejudiced. At the probable cause hearing,
13 the detained person shall have the following rights:

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

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

18 c. To appear in person at the hearing.

19 d. To be represented by counsel.

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

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

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

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

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

30 a. Verifies the respondent's identity.

31 b. Determines whether probable cause exists to believe
32 that the respondent is a dangerously violent person.

33 5. If the court determines that probable cause does exist,
34 the court shall direct that the respondent be transferred to
35 an appropriate secure facility for an evaluation as to whether

1 the respondent is a dangerously violent person. The
2 evaluation shall be conducted by a person deemed to be
3 professionally qualified to conduct such an examination.

4 Sec. 7. NEW SECTION. 229B.6 POWERS OF INVESTIGATIVE
5 PERSONNEL BEFORE A PETITION IS FILED.

6 1. The prosecuting attorney or attorney general is
7 authorized upon the occurrence of a recent overt act, or upon
8 receiving written notice pursuant to section 229B.3, or before
9 the filing of a petition under this chapter, to subpoena and
10 compel the attendance of witnesses, examine the witnesses
11 under oath, and require the production of documentary evidence
12 for inspection, reproduction, or copying. Except as otherwise
13 provided by this section, the prosecuting attorney or attorney
14 general shall have the same powers and limitations, subject to
15 judicial oversight and enforcement, as provided by this
16 chapter and by the Iowa rules of civil procedure. Any person
17 compelled to appear under a demand for oral testimony under
18 this section may be accompanied, represented, and advised by
19 counsel at the person's own expense.

20 2. The examination of all witnesses under this section
21 shall be conducted by the prosecuting attorney or attorney
22 general before an officer authorized to administer oaths under
23 section 63A.1. The testimony shall be taken by a certified
24 shorthand reporter or by a sound recording device and shall be
25 transcribed or otherwise preserved in the same manner as
26 provided for the preservation of depositions under the Iowa
27 rules of civil procedure. The prosecuting attorney or
28 attorney general may exclude from the examination all persons
29 except the witness, witness's counsel, the officer before whom
30 the testimony is to be taken, law enforcement officials, and a
31 certified shorthand reporter. Prior to oral examination, the
32 person shall be advised by the prosecuting attorney or
33 attorney general of the person's right to refuse to answer any
34 questions on the basis of the privilege against self-
35 incrimination. The examination shall be conducted in a manner

1 consistent with the rules dealing with the taking of
2 depositions.

3 Sec. 8. NEW SECTION. 229B.7 COUNSEL AND EXPERTS --
4 INDIGENT PERSONS.

5 1. A respondent to a petition alleging the person to be a
6 dangerously violent person shall be entitled to the assistance
7 of counsel upon the filing of the petition under section
8 229A.4 and, if the respondent is indigent, the court shall
9 appoint counsel to assist the respondent at state expense.

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

33 Sec. 9. NEW SECTION. 229B.8 TRIAL -- DETERMINATION --
34 COMMITMENT PROCEDURE -- CHAPTER 28E AGREEMENTS -- MISTRIALS.

35 1. If the person charged with a violent offense has been

1 found incompetent to stand trial and the person is about to be
2 released pursuant to section 812.5, or the person has been
3 found not guilty of a violent offense by reason of insanity,
4 if a petition has been filed seeking the person's commitment
5 under this chapter, the court shall first hear evidence and
6 determine whether the person did commit the act or acts
7 charged. At the hearing on this issue, the rules of evidence
8 applicable in criminal cases shall apply, and all
9 constitutional rights available to defendants at criminal
10 trials, other than the right not to be tried while
11 incompetent, shall apply. After hearing evidence on this
12 issue, the court shall make specific findings on whether the
13 person did commit the act or acts charged, the extent to which
14 the person's incompetence or insanity affected the outcome of
15 the hearing, including its effect on the person's ability to
16 consult with and assist counsel and to testify on the person's
17 own behalf, the extent to which the evidence could be
18 reconstructed without the assistance of the person, and the
19 strength of the prosecution's case. If after the conclusion
20 of the hearing on this issue the court finds, beyond a
21 reasonable doubt, that the person did commit the act or acts
22 charged, the court shall enter a final order, appealable by
23 the person, on that issue, and may proceed to consider whether
24 the person should be committed pursuant to this chapter.

25 2. Within ninety days after either the entry of the order
26 waiving the probable cause hearing or completion of the
27 probable cause hearing held under section 229B.5, the court
28 shall conduct a trial to determine whether the respondent is a
29 dangerously violent person. The trial may be continued upon
30 the request of either party and a showing of good cause, or by
31 the court on its own motion in the due administration of
32 justice, and when the respondent will not be substantially
33 prejudiced. The respondent, the attorney general, or the
34 judge shall have the right to demand that the trial be before
35 a jury. Such demand for the trial to be before a jury shall

1 be filed, in writing, at least ten days prior to trial. The
2 number and selection of jurors shall be determined as provided
3 in chapter 607A. If no demand is made, the trial shall be
4 before the court.

5 3. At trial, the court or jury shall determine whether,
6 beyond a reasonable doubt, the respondent is a dangerously
7 violent person. If the determination that the respondent is a
8 dangerously violent person is made by a jury, the
9 determination shall be by unanimous verdict of such jury.

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

16 4. The control, care, and treatment of a person determined
17 to be a dangerously violent person shall be provided at a
18 facility operated by the department of human services. At all
19 times, persons committed for control, care, and treatment by
20 the department of human services pursuant to this chapter
21 shall be kept in a secure facility and those patients shall be
22 segregated at all times from any other patient under the
23 supervision of the department of human services. A person
24 committed pursuant to this chapter to the custody of the
25 department of human services may be kept in a facility or
26 building separate from any other patient under the supervision
27 of the department of human services. The department of human
28 services may enter into a chapter 28E agreement with the
29 department of corrections or other appropriate agency in this
30 state or another state for the confinement of patients who
31 have been determined to be dangerously violent persons.
32 Patients who are in the confinement of the director of the
33 department of corrections pursuant to a chapter 28E agreement
34 shall be housed and managed separately from criminal offenders
35 in the custody of the director of the department of

1 corrections, and, except for occasional instances of
2 supervised incidental contact, shall be segregated from those
3 offenders.

4 5. If the court or jury is not satisfied beyond a
5 reasonable doubt that the respondent is a dangerously violent
6 person, the court shall direct the respondent's release. Upon
7 a mistrial, the court shall direct that the respondent be held
8 at an appropriate secure facility until another trial is
9 conducted. Any subsequent trial following a mistrial shall be
10 held within ninety days of the previous trial, unless such
11 subsequent trial is continued as provided in subsection 2.

12 Sec. 10. NEW SECTION. 229B.9 ANNUAL EXAMINATIONS --
13 DISCHARGE PETITIONS BY PERSONS COMMITTED.

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

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

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

34 4. The committed person shall have a right to have an
35 attorney represent the person at the probable cause hearing

1 but the person is not entitled to be present at the hearing.
2 If the court at the hearing determines that probable cause
3 exists to believe that the person's mental abnormality has so
4 changed that the person is safe to be at large and is not
5 likely to engage in violent acts if discharged, then the court
6 shall set a final hearing on the issue.

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

22 Sec. 11. NEW SECTION. 229B.10 DETENTION AND COMMITMENT
23 TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

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

27 Sec. 12. NEW SECTION. 229B.11 PETITION FOR DISCHARGE --
28 PROCEDURE.

29 1. If the director of human services determines that the
30 person's mental abnormality has so changed that the person is
31 not likely to commit violent acts if discharged, the director
32 shall authorize the person to petition the court for
33 discharge. The petition shall be served upon the court and
34 the attorney general. The court, upon receipt of the petition
35 for discharge, shall order a hearing within thirty days. The

1 attorney general shall represent the state, and shall have the
2 right to have the petitioner examined by an expert or
3 professional person of the attorney general's choice. The
4 hearing shall be before a jury if demanded by either the
5 petitioner or the attorney general. The burden of proof shall
6 be upon the attorney general to show beyond a reasonable doubt
7 that the petitioner's mental abnormality remains such that the
8 petitioner is not safe to be at large and that if discharged
9 is likely to engage in violent acts.

10 2. Upon a finding that the state has failed to meet its
11 burden of proof under this section, or a stipulation by the
12 state, the court shall authorize the release of the committed
13 person. Release may be ordered with or without supervision.
14 If supervised release is ordered, the department of human
15 services shall prepare a plan addressing the person's needs
16 for counseling, medication, community support services,
17 residential services, vocational services, alcohol and other
18 drug abuse treatment, and any other treatment or supervision
19 necessary. If the court orders the release of the committed
20 person with supervision, the court shall order supervision by
21 an agency with jurisdiction that is familiar with the
22 placement of criminal offenders in the community.

23 Sec. 13. NEW SECTION. 229B.12 SUBSEQUENT DISCHARGE
24 PETITIONS -- LIMITATIONS.

25 Nothing in this chapter shall prohibit a person from filing
26 a petition for discharge at any time pursuant to this chapter.
27 However, if a person has previously filed a petition for
28 discharge without the authorization of the director of human
29 services, and the court determines either upon review of the
30 petition or following a hearing that the petition was
31 frivolous or that the petitioner's condition had not so
32 changed that the person was safe to be at large, then the
33 court shall summarily deny the subsequent petition unless the
34 petition contains facts upon which a court could find the
35 condition of the petitioner had so changed that a hearing was

1 warranted. Upon receipt of a first or subsequent petition
2 from a committed person without the director's authorization,
3 the court shall endeavor whenever possible to review the
4 petition and determine if the petition is based upon frivolous
5 grounds. If the court determines that a petition is
6 frivolous, the court shall deny the petition without a
7 hearing.

8 Sec. 14. NEW SECTION. 229B.13 DIRECTOR OF HUMAN SERVICES
9 -- RESPONSIBILITY FOR COSTS -- REIMBURSEMENT.

10 The director of human services shall be responsible for all
11 costs relating to the evaluation, treatment, and services
12 provided to persons committed to the director's custody after
13 the court or jury determines that the respondent is a
14 dangerously violent person and pursuant to an order for
15 commitment under any provision of this chapter. If
16 supervision is ordered pursuant to section 229B.11, the
17 director shall also be responsible for all costs related to
18 the supervision of any person. Reimbursement may be obtained
19 by the director from the patient and any person legally liable
20 or bound by contract for the support of the patient for the
21 cost of care and treatment provided. As used in this section,
22 "any person legally liable" does not include a political
23 subdivision.

24 Sec. 15. NEW SECTION. 229B.14 SEVERABILITY.

25 If any provision of this chapter or the application thereof
26 to any person or circumstances is held invalid, the invalidity
27 shall not affect other provisions or applications of the
28 chapter which can be given effect without the invalid
29 provisions or application and, to this end, the provisions of
30 this chapter are severable.

31 Sec. 16. NEW SECTION. 229B.15 RELEASE OF CONFIDENTIAL OR
32 PRIVILEGED INFORMATION AND RECORDS.

33 Notwithstanding anything in chapter 22 to the contrary,
34 relevant information and records which would otherwise be
35 confidential or privileged shall be released to the agency

1 with jurisdiction or the attorney general for the purpose of
2 meeting the notice requirement provided in section 229B.3 and
3 determining whether a person is or continues to be a
4 dangerously violent person.

5 Sec. 17. NEW SECTION. 229B.16 COURT RECORDS -- SEALED
6 AND OPENED BY COURT ORDER.

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

13 Sec. 18. NEW SECTION. 229B.17 SHORT TITLE.

14 This chapter shall be known and may be cited as the
15 "Dangerously Violent Person Act".

16 Sec. 19. Section 235A.15, subsection 2, paragraph d,
17 subparagraph (6), Code Supplement 1999, is amended to read as
18 follows:

19 (6) To the department of justice for purposes of review by
20 the prosecutor's review committee or the commitment of
21 sexually violent predators as provided in chapter 229A or the
22 commitment of dangerously violent persons as provided in
23 chapter 229B.

24 Sec. 20. Section 235A.15, subsection 3, paragraph d, Code
25 Supplement 1999, is amended to read as follows:

26 d. The department of justice for purposes of review by the
27 prosecutor's review committee or the commitment of sexually
28 violent predators as provided in chapter 229A or the
29 commitment of dangerously violent persons as provided in
30 chapter 229B.

31 Sec. 21. Section 235A.15, subsection 4, paragraph d, Code
32 Supplement 1999, is amended to read as follows:

33 d. The department of justice for purposes of review by the
34 prosecutor's review committee or the commitment of sexually
35 violent predators as provided in chapter 229A or the

1 commitment of dangerously violent persons as provided in
2 chapter 229B.

3 Sec. 22. Section 235A.18, subsection 1, paragraphs a and
4 b, Code Supplement 1999, are amended to read as follows:

5 a. Report and disposition data relating to a particular
6 case of alleged child abuse shall be sealed ten years after
7 the initial placement of the data in the registry unless good
8 cause be shown why the data should remain open to authorized
9 access. If a subsequent report of an alleged case of child
10 abuse involving the child named in the initial data placed in
11 the registry as the victim of abuse or a person named in the
12 data as having abused a child is received by the department
13 within this ten-year period, the data shall be sealed ten
14 years after receipt of the subsequent report unless good cause
15 be shown why the data should remain open to authorized access.
16 However, such report and disposition data shall be made
17 available to the department of justice if the department
18 requests access to the alleged child abuse records for
19 purposes of review by the prosecutor's review committee or
20 commitment of sexually violent predators under chapter 229A or
21 the commitment of dangerously violent persons as provided in
22 chapter 229B.

23 b. Data sealed in accordance with this section shall be
24 expunged eight years after the date the data was sealed.
25 However, if the report data and the disposition data involve
26 child abuse as defined in section 232.68, subsection 2,
27 paragraphs "c" and "e", the data shall not be expunged for a
28 period of thirty years. Sealed data shall be made available
29 to the department of justice upon request if the prosecutor's
30 review committee is reviewing records or if a prosecuting
31 attorney has filed a petition to commit a sexually violent
32 predator under chapter 229A or the commitment of dangerously
33 violent persons as provided in chapter 229B.

34 Sec. 23. Section 815.7, Code Supplement 1999, is amended
35 to read as follows:

1 815.7 FEES TO ATTORNEYS.

2 An attorney who has not entered into a contract authorized
3 under section 13B.4 and who is appointed by the court to
4 represent any person charged with a crime in this state,
5 seeking postconviction relief, against whom a contempt action
6 is pending, appealing a criminal conviction, appealing a
7 denial of postconviction relief, or subject to a proceeding
8 under chapter 229A or 229B, or to serve as counsel for any
9 person or guardian ad litem for any child in juvenile court,
10 shall be entitled to reasonable compensation and expenses.
11 For appointments made on or after July 1, 1999, the reasonable
12 compensation shall be calculated on the basis of sixty dollars
13 per hour for class "A" felonies, fifty-five dollars per hour
14 for class "B" felonies, and fifty dollars per hour for all
15 other offenses. The expenses shall include any sums as are
16 necessary for investigations in the interest of justice, and
17 the cost of obtaining the transcript of the trial record and
18 briefs if an appeal is filed. The attorney need not follow
19 the case into another county or into the appellate court
20 unless so directed by the court. If the attorney follows the
21 case into another county or into the appellate court, the
22 attorney shall be entitled to compensation as provided in this
23 section. Only one attorney fee shall be so awarded in any one
24 case except that in class "A" felony cases, two may be
25 authorized.

26 Sec. 24. Section 815.9, subsection 1, unnumbered paragraph
27 1, Code Supplement 1999, is amended to read as follows:

28 For purposes of this chapter, chapter 13B, chapter 229A,
29 chapter 229B, chapter 232, chapter 665, chapter 814, chapter
30 822, and the rules of criminal procedure, a person is indigent
31 if the person is entitled to an attorney appointed by the
32 court as follows:

33 Sec. 25. Section 815.10, subsection 1, Code Supplement
34 1999, is amended to read as follows:

35 1. The court, for cause and upon its own motion or upon

1 application by an indigent person or a public defender, shall
2 appoint the state public defender, the state public defender's
3 designee pursuant to section 13B.4, or an attorney pursuant to
4 section 13B.9 to represent an indigent person at any stage of
5 the criminal, postconviction, contempt, commitment under
6 chapter 229A or 229B, or juvenile proceedings or on appeal of
7 any criminal, postconviction, contempt, commitment under
8 chapter 229A or 229B, or juvenile action in which the indigent
9 person is entitled to legal assistance at public expense.
10 However, in juvenile cases, the court may directly appoint an
11 existing nonprofit corporation established for and engaged in
12 the provision of legal services for juveniles. An appointment
13 shall not be made unless the person is determined to be
14 indigent under section 815.9. Only one attorney shall be
15 appointed in all cases, except that in class "A" felony cases
16 the court may appoint two attorneys.

17 Sec. 26. Section 815.11, Code Supplement 1999, is amended
18 to read as follows:

19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.
20 Costs incurred under chapter 229A, 229B, 665, or 822, or
21 section 232.141, subsection 3, paragraph "c", or sections
22 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10,
23 or the rules of criminal procedure on behalf of an indigent
24 shall be paid from funds appropriated by the general assembly
25 to the department of inspections and appeals for those
26 purposes.

27 Sec. 27. Section 915.45, Code 1999, is amended to read as
28 follows:

29 915.45 NOTICE TO VICTIMS OF DISCHARGE OF PERSONS
30 COMMITTED.

31 In addition to any other information required to be
32 released under chapter 229A or 229B, prior to the discharge of
33 a person committed under chapter 229A or 229B, the director of
34 human services shall give written notice of the person's
35 discharge to any living victim of the person's activities or

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

8 EXPLANATION

9 This bill establishes a civil commitment procedure for
10 dangerously violent persons.

11 The bill generally parallels the procedure for the
12 commitment of sexually violent predators. The bill provides
13 that the attorney general or a county attorney may petition to
14 commence commitment proceedings against persons who have been
15 convicted of a violent offense or who have been acquitted of a
16 violent offense by reason of insanity or found incompetent to
17 stand trial for such an offense.

18 The bill provides for the establishment of a
19 multidisciplinary team which will assess whether a person
20 meets the definition of a dangerously violent person. The
21 bill also provides that the attorney general shall appoint a
22 prosecutor's review committee to review records of each person
23 referred to it by an agency with jurisdiction over the person
24 and records of the assessment performed by the
25 multidisciplinary team. The bill provides that the agency
26 with jurisdiction shall give written notice within 90 days of
27 the person's discharge from custody to the attorney general
28 and to the multidisciplinary team. The prosecutor's review
29 committee shall assist the attorney general in determining
30 whether the person referred to the committee meets the
31 definition of a dangerously violent person and whether the
32 person should be civilly committed.

33 A probable cause hearing must be conducted within 72 hours
34 of the filing of a petition. A probable cause hearing may be
35 continued upon a showing of good cause by either party or the

1 court. If the court finds there is probable cause to believe
2 that the person is a dangerously violent person, the court
3 must direct that the person be transferred to an appropriate
4 secure facility and that an evaluation of the person be
5 conducted.

6 Within 90 days of the filing of the petition, a trial must
7 be held on the question of whether the person is to be
8 committed as a dangerously violent person. At trial, the
9 person is entitled to counsel, and has the right to retain and
10 be evaluated by experts of the person's own choosing. Any
11 independent professional who is conducting an evaluation of
12 the person is to have access to all relevant medical and
13 psychological records and reports. At trial, the court or
14 jury if tried before a jury must determine whether there is
15 sufficient evidence to prove beyond a reasonable doubt that
16 the person is a dangerously violent person. If the court or
17 jury determines that there is sufficient evidence, the court
18 must order that the person be placed in an appropriate secure
19 facility under the supervision of the director of the
20 department of human services until the person's mental
21 abnormality has improved to the extent that it is safe to
22 release the person.

23 Under the bill a person committed as a dangerously violent
24 person is to be evaluated on an annual basis to determine the
25 person's mental condition. The court shall conduct an annual
26 review and probable cause hearing on the status of the
27 committed person. After the probable cause hearing, the
28 committed person is entitled to a final hearing about whether
29 there is still sufficient evidence to prove beyond a
30 reasonable doubt that the person is a dangerously violent
31 person and if discharged is likely to engage in violent acts.

32 The bill provides that if the director of human services
33 determines the person's mental abnormality has so changed that
34 the person is not likely to engage in violent acts if
35 discharged, the director shall authorize the person to

1 petition the court for release. Upon receipt of the petition
2 the court shall order a hearing within 30 days and at such
3 hearing the burden of proof shall be on the state to show
4 beyond a reasonable doubt that the person's mental abnormality
5 remains such that the person if discharged is likely to engage
6 in violent acts. If the state has failed to meet its burden
7 of proof, the court may release the person with or without
8 community supervision.

9 Under the bill the person is entitled to petition the court
10 for release at any time. The director of human services must
11 also annually notify the person of the person's right to
12 petition for such release. Although a committed person may
13 petition for release at any time, if the committed person has
14 previously filed a petition for release, and the court has
15 determined that a previous petition was frivolous or that a
16 committed person's condition has not changed sufficiently to
17 warrant release, the court must deny the petition unless new
18 facts are alleged which could support a contrary finding.

19 The bill provides that the department of human services
20 shall be responsible for all costs related to the evaluation,
21 treatment, community supervision if ordered, and services
22 provided to a person committed as a dangerously violent
23 person.

24 The bill provides that a person is entitled to counsel
25 throughout any proceeding under this bill. The bill provides
26 that the state public defender shall coordinate the legal
27 representation of an indigent person during any proceedings.
28 The bill also provides that except for filing a petition and
29 the subsequent trial to commit a dangerously violent person,
30 the attorney general's office is responsible for representing
31 the state's interest. Under the bill a local county attorney
32 may file a petition to commit a person as a dangerously
33 violent person and represent the state's interest during the
34 subsequent trial.

35 The bill provides the attorney general with access to

1 certain child abuse records when determining whether to file a
2 petition alleging a person is a dangerously violent person for
3 purposes of committing such a person. In addition, the bill
4 provides that all founded child abuse records that are sealed
5 shall still be available to the attorney general for purposes
6 of the prosecutor's review committee's review of records or
7 for committing a dangerously violent person. Such sealed data
8 is to be expunged in 30 years, rather than eight years, after
9 sealing.

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