

# Senate Study Bill 3135

## Bill Text

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1 1 Section 1. Section [13B.4](#), subsection 1, Code Supplement  
1 2 1999, is amended to read as follows:

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

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

1 16 The general assembly finds that certain persons have become  
1 17 increasingly violent in society and that a small but extremely  
1 18 dangerous group of violent persons exists which is made up of  
1 19 persons who do not have a type of mental disease or defect  
1 20 that renders them appropriate for involuntary treatment  
1 21 pursuant to the treatment provisions for mentally ill persons  
1 22 under chapter 229, since that chapter is intended to provide  
1 23 short-term treatment to persons with serious mental disorders  
1 24 and then return them to the community. In contrast to persons  
1 25 appropriate for civil commitment under chapter 229,  
1 26 dangerously violent persons generally have antisocial  
1 27 personality features that are unamenable to existing mental  
1 28 illness treatment modalities and that render them likely to  
1 29 engage in violent behavior. The general assembly finds that  
1 30 dangerously violent persons' likelihood of engaging in repeat  
1 31 acts of violence is high and that the existing involuntary  
1 32 commitment procedure under chapter 229 is inadequate to  
1 33 address the risk these dangerously violent persons pose to  
1 34 society.

1 35 The general assembly further finds that the prognosis for  
2 1 rehabilitating dangerously violent persons in a prison setting  
2 2 is poor, because the treatment needs of, and the treatment  
2 3 modalities for, this population are very different from the  
2 4 traditional treatment modalities available in a prison setting  
2 5 or for persons appropriate for commitment under chapter 229.  
2 6 Therefore, the general assembly finds that a civil commitment  
2 7 procedure for long-term care and treatment of dangerously  
2 8 violent persons is necessary.

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

2 10 As used in this chapter:

2 11 1. "Agency with jurisdiction" means an agency which has  
2 12 custody of or releases a person serving a sentence or term of  
2 13 confinement or is otherwise in confinement based upon a lawful  
2 14 order or authority, and includes but is not limited to the  
2 15 department of corrections, the department of human services, a  
2 16 judicial district department of correctional services, and the  
2 17 Iowa board of parole.

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

2 21 3. "Likely to engage in violent acts" means that the

2 22 person more likely than not will engage in acts which are  
2 23 violent offenses. If a person is not confined at the time  
2 24 that a petition is filed, a person is "likely to engage in  
2 25 violent acts" only if the person commits a recent overt act.  
2 26 4. "Mental abnormality" means a congenital or acquired  
2 27 condition affecting the emotional or volitional capacity of a  
2 28 person and predisposing that person to commit violent offenses  
2 29 to a degree which would constitute a menace to the health and  
2 30 safety of others.  
2 31 5. "Motivated by violence" means that one of the purposes  
2 32 for commission of a crime is the purpose of gratifying oneself  
2 33 through an act of violence.  
2 34 6. "Recent overt act" means any act of a violent nature  
2 35 that has either caused harm or creates a reasonable  
3 1 apprehension of such harm.  
3 2 7. "Violent offense" means:  
3 3 a. A forcible felony that is not a sexually violent  
3 4 offense defined under chapter 229A.  
3 5 b. An offense involving an attempt or conspiracy to commit  
3 6 any offense referred to in this subsection.  
3 7 c. An offense under prior law of this state or an offense  
3 8 committed in another jurisdiction which would constitute an  
3 9 equivalent offense under this section.  
3 10 8. "Dangerously violent person" means a person who has  
3 11 been convicted of or charged with a violent offense and who  
3 12 suffers from a mental abnormality which makes the person  
3 13 likely to engage in violent acts, if not confined in an  
3 14 appropriate secure facility.  
3 15 Sec. 4. NEW SECTION. 229B.3 NOTICE OF DISCHARGE OF A  
3 16 DANGEROUSLY VIOLENT PERSON IMMUNITY FROM LIABILITY  
3 17 MULTIDISCIPLINARY TEAM PROSECUTOR'S REVIEW COMMITTEE  
3 18 ASSESSMENT OF PERSON.  
3 19 1. When it appears that a person who is confined may meet  
3 20 the definition of a dangerously violent person, the agency  
3 21 with jurisdiction shall give written notice to the attorney  
3 22 general and the multidisciplinary team established in  
3 23 subsection 4, no later than ninety days prior to any of the  
3 24 following events:  
3 25 a. The anticipated discharge of a person who has been  
3 26 convicted of a violent offense from total confinement, except  
3 27 that in the case of a person who is returned to prison for no  
3 28 more than ninety days as a result of revocation of parole,  
3 29 written notice shall be given as soon as practicable following  
3 30 the person's readmission to prison.  
3 31 b. The discharge of a person who has been charged with a  
3 32 violent offense and who has been determined to be incompetent  
3 33 to stand trial pursuant to chapter 812.  
3 34 c. The discharge of a person who has been found not guilty  
3 35 by reason of insanity of a violent offense.  
4 1 2. If notice is given under subsection 1, the agency with  
4 2 jurisdiction shall inform the attorney general and the  
4 3 multidisciplinary team established in subsection 4, of both of  
4 4 the following:  
4 5 a. The person's name, identifying factors, anticipated  
4 6 future residence, and offense history.  
4 7 b. Documentation of any institutional evaluation and any  
4 8 treatment received.  
4 9 3. The agency with jurisdiction, its employees, officials,  
4 10 members of the multidisciplinary team established in  
4 11 subsection 4, members of the prosecutor's review committee  
4 12 appointed as provided in subsection 5, and individuals  
4 13 contracting, appointed, or volunteering to perform services  
4 14 under this section shall be immune from liability for any  
4 15 good-faith conduct under this section.  
4 16 4. The director of the department of corrections shall  
4 17 establish a multidisciplinary team which may include  
4 18 individuals from other state agencies to review available

4 19 records of each person referred to such team pursuant to  
4 20 subsection 1. The team, within thirty days of receiving  
4 21 notice, shall assess whether or not the person meets the  
4 22 definition of a dangerously violent person. The team shall  
4 23 notify the attorney general of its assessment.

4 24 5. The attorney general shall appoint a prosecutor's  
4 25 review committee to review the records of each person referred  
4 26 to the attorney general pursuant to subsection 1. The  
4 27 prosecutor's review committee shall assist the attorney  
4 28 general in the determination of whether or not the person  
4 29 meets the definition of a dangerously violent person. The  
4 30 assessment of the multidisciplinary team shall be made  
4 31 available to the attorney general and the prosecutor's review  
4 32 committee.

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

4 35 1. If it appears that a person presently confined may be a  
5 1 dangerously violent person and the prosecutor's review  
5 2 committee has determined that the person meets the definition  
5 3 of a dangerously violent person, the attorney general may file  
5 4 a petition alleging that the person is a dangerously violent  
5 5 person and stating sufficient facts to support such an  
5 6 allegation.

5 7 2. A prosecuting attorney of the county in which the  
5 8 person was convicted or charged, or the attorney general if  
5 9 requested by the prosecuting attorney, may file a petition  
5 10 alleging that a person is a dangerously violent person and  
5 11 stating sufficient facts to support such an allegation, if it  
5 12 appears that a person who has committed a recent overt act  
5 13 meets any of the following criteria:

5 14 a. The person was convicted of a violent offense and has  
5 15 been discharged after the completion of the sentence imposed  
5 16 for the offense.

5 17 b. The person was charged with, but was acquitted of, a  
5 18 violent offense by reason of insanity and has been released  
5 19 from confinement or any supervision.

5 20 c. The person was charged with, but was found to be  
5 21 incompetent to stand trial for, a violent offense and has been  
5 22 released from confinement or any supervision.

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

5 25 1. Upon filing of a petition under section 229B.4, the  
5 26 court shall make a preliminary determination as to whether  
5 27 probable cause exists to believe that the person named in the  
5 28 petition is a dangerously violent person. Upon a preliminary  
5 29 finding of probable cause, the court shall direct that the  
5 30 person named in the petition be taken into custody and that  
5 31 the person be served with a copy of the petition and any  
5 32 supporting documentation and notice of the procedures required  
5 33 by this chapter. If the person is in custody at the time of  
5 34 the filing of the petition, the court shall determine whether  
5 35 a transfer of the person to an appropriate secure facility is  
6 1 appropriate pending the outcome of the proceedings or whether  
6 2 the custody order should be delayed until the date of release  
6 3 of the person.

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

6 14 a. To be provided with prior notice of date, time, and  
6 15 location of the probable cause hearing.

6 16 b. To respond to the preliminary finding of probable  
6 17 cause.

6 18 c. To appear in person at the hearing.

6 19 d. To be represented by counsel.

6 20 e. To present evidence on the respondent's own behalf.

6 21 f. To cross-examine witnesses who testify against the  
6 22 respondent.

6 23 g. To view and copy all petitions and reports in the  
6 24 possession of the court.

6 25 3. At the hearing, the state may rely upon the petition  
6 26 filed under subsection 1, but may also supplement the petition  
6 27 with additional documentary evidence or live testimony.

6 28 4. At the conclusion of the hearing, the court shall enter  
6 29 an order which does both of the following:

6 30 a. Verifies the respondent's identity.

6 31 b. Determines whether probable cause exists to believe  
6 32 that the respondent is a dangerously violent person.

6 33 5. If the court determines that probable cause does exist,  
6 34 the court shall direct that the respondent be transferred to  
6 35 an appropriate secure facility for an evaluation as to whether  
7 1 the respondent is a dangerously violent person. The  
7 2 evaluation shall be conducted by a person deemed to be  
7 3 professionally qualified to conduct such an examination.

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

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

7 20 2. The examination of all witnesses under this section  
7 21 shall be conducted by the prosecuting attorney or attorney  
7 22 general before an officer authorized to administer oaths under  
7 23 section 63A.1. The testimony shall be taken by a certified  
7 24 shorthand reporter or by a sound recording device and shall be  
7 25 transcribed or otherwise preserved in the same manner as  
7 26 provided for the preservation of depositions under the Iowa  
7 27 rules of civil procedure. The prosecuting attorney or  
7 28 attorney general may exclude from the examination all persons  
7 29 except the witness, witness's counsel, the officer before whom  
7 30 the testimony is to be taken, law enforcement officials, and a  
7 31 certified shorthand reporter. Prior to oral examination, the  
7 32 person shall be advised by the prosecuting attorney or  
7 33 attorney general of the person's right to refuse to answer any  
7 34 questions on the basis of the privilege against self-  
7 35 incrimination. The examination shall be conducted in a manner  
8 1 consistent with the rules dealing with the taking of  
8 2 depositions.

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

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

8 10 2. If a respondent is subjected to an examination under  
8 11 this chapter, the respondent may retain experts or  
8 12 professional persons to perform an independent examination on

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

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

8 35 1. If the person charged with a violent offense has been  
9 1 found incompetent to stand trial and the person is about to be  
9 2 released pursuant to section 812.5, or the person has been  
9 3 found not guilty of a violent offense by reason of insanity,  
9 4 if a petition has been filed seeking the person's commitment  
9 5 under this chapter, the court shall first hear evidence and  
9 6 determine whether the person did commit the act or acts  
9 7 charged. At the hearing on this issue, the rules of evidence  
9 8 applicable in criminal cases shall apply, and all  
9 9 constitutional rights available to defendants at criminal  
9 10 trials, other than the right not to be tried while  
9 11 incompetent, shall apply. After hearing evidence on this  
9 12 issue, the court shall make specific findings on whether the  
9 13 person did commit the act or acts charged, the extent to which  
9 14 the person's incompetence or insanity affected the outcome of  
9 15 the hearing, including its effect on the person's ability to  
9 16 consult with and assist counsel and to testify on the person's  
9 17 own behalf, the extent to which the evidence could be  
9 18 reconstructed without the assistance of the person, and the  
9 19 strength of the prosecution's case. If after the conclusion  
9 20 of the hearing on this issue the court finds, beyond a  
9 21 reasonable doubt, that the person did commit the act or acts  
9 22 charged, the court shall enter a final order, appealable by  
9 23 the person, on that issue, and may proceed to consider whether  
9 24 the person should be committed pursuant to this chapter.

9 25 2. Within ninety days after either the entry of the order  
9 26 waiving the probable cause hearing or completion of the  
9 27 probable cause hearing held under section 229B.5, the court  
9 28 shall conduct a trial to determine whether the respondent is a  
9 29 dangerously violent person. The trial may be continued upon  
9 30 the request of either party and a showing of good cause, or by  
9 31 the court on its own motion in the due administration of  
9 32 justice, and when the respondent will not be substantially  
9 33 prejudiced. The respondent, the attorney general, or the  
9 34 judge shall have the right to demand that the trial be before  
9 35 a jury. Such demand for the trial to be before a jury shall  
10 1 be filed, in writing, at least ten days prior to trial. The  
10 2 number and selection of jurors shall be determined as provided  
10 3 in chapter 607A. If no demand is made, the trial shall be  
10 4 before the court.

10 5 3. At trial, the court or jury shall determine whether,  
10 6 beyond a reasonable doubt, the respondent is a dangerously  
10 7 violent person. If the determination that the respondent is a  
10 8 dangerously violent person is made by a jury, the  
10 9 determination shall be by unanimous verdict of such jury.

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

10 16 4. The control, care, and treatment of a person determined  
10 17 to be a dangerously violent person shall be provided at a  
10 18 facility operated by the department of human services. At all  
10 19 times, persons committed for control, care, and treatment by  
10 20 the department of human services pursuant to this chapter  
10 21 shall be kept in a secure facility and those patients shall be  
10 22 segregated at all times from any other patient under the  
10 23 supervision of the department of human services. A person  
10 24 committed pursuant to this chapter to the custody of the  
10 25 department of human services may be kept in a facility or  
10 26 building separate from any other patient under the supervision  
10 27 of the department of human services. The department of human  
10 28 services may enter into a chapter 28E agreement with the  
10 29 department of corrections or other appropriate agency in this  
10 30 state or another state for the confinement of patients who  
10 31 have been determined to be dangerously violent persons.  
10 32 Patients who are in the confinement of the director of the  
10 33 department of corrections pursuant to a chapter 28E agreement  
10 34 shall be housed and managed separately from criminal offenders  
10 35 in the custody of the director of the department of  
11 1 corrections, and, except for occasional instances of  
11 2 supervised incidental contact, shall be segregated from those  
11 3 offenders.

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

11 12 Sec. 10. NEW SECTION. 229B.9 ANNUAL EXAMINATIONS  
11 13 DISCHARGE PETITIONS BY PERSONS COMMITTED.

11 14 1. Each person committed under this chapter shall have a  
11 15 current examination of the person's mental abnormality made  
11 16 once every year. The person may retain, or if the person is  
11 17 indigent and so requests, the court may appoint a qualified  
11 18 expert or professional person to examine such person, and such  
11 19 expert or professional person shall be given access to all  
11 20 records concerning the person.

11 21 2. The report of the annual examination shall be provided  
11 22 to the court that committed the person under this chapter.  
11 23 The court shall conduct an annual review and probable cause  
11 24 hearing on the status of the committed person.

11 25 3. Nothing contained in this chapter shall prohibit the  
11 26 committed person from otherwise petitioning the court for  
11 27 discharge at the annual probable cause hearing. The director  
11 28 of human services shall provide the committed person with an  
11 29 annual written notice of the person's right to petition the  
11 30 court for discharge over the director's objection. The notice  
11 31 shall contain a waiver of rights. The director shall forward  
11 32 the notice and waiver form to the court with the annual  
11 33 report.

11 34 4. The committed person shall have a right to have an  
11 35 attorney represent the person at the probable cause hearing  
12 1 but the person is not entitled to be present at the hearing.  
12 2 If the court at the hearing determines that probable cause  
12 3 exists to believe that the person's mental abnormality has so  
12 4 changed that the person is safe to be at large and is not  
12 5 likely to engage in violent acts if discharged, then the court  
12 6 shall set a final hearing on the issue.

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

12 22 Sec. 11. NEW SECTION. 229B.10 DETENTION AND COMMITMENT  
12 23 TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

12 24 The involuntary detention or commitment of persons under  
12 25 this chapter shall conform to constitutional requirements for  
12 26 care and treatment.

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

12 29 1. If the director of human services determines that the  
12 30 person's mental abnormality has so changed that the person is  
12 31 not likely to commit violent acts if discharged, the director  
12 32 shall authorize the person to petition the court for  
12 33 discharge. The petition shall be served upon the court and  
12 34 the attorney general. The court, upon receipt of the petition  
12 35 for discharge, shall order a hearing within thirty days. The  
13 1 attorney general shall represent the state, and shall have the  
13 2 right to have the petitioner examined by an expert or  
13 3 professional person of the attorney general's choice. The  
13 4 hearing shall be before a jury if demanded by either the  
13 5 petitioner or the attorney general. The burden of proof shall  
13 6 be upon the attorney general to show beyond a reasonable doubt  
13 7 that the petitioner's mental abnormality remains such that the  
13 8 petitioner is not safe to be at large and that if discharged  
13 9 is likely to engage in violent acts.

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

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

13 25 Nothing in this chapter shall prohibit a person from filing  
13 26 a petition for discharge at any time pursuant to this chapter.  
13 27 However, if a person has previously filed a petition for  
13 28 discharge without the authorization of the director of human  
13 29 services, and the court determines either upon review of the  
13 30 petition or following a hearing that the petition was  
13 31 frivolous or that the petitioner's condition had not so  
13 32 changed that the person was safe to be at large, then the  
13 33 court shall summarily deny the subsequent petition unless the  
13 34 petition contains facts upon which a court could find the  
13 35 condition of the petitioner had so changed that a hearing was  
14 1 warranted. Upon receipt of a first or subsequent petition  
14 2 from a committed person without the director's authorization,  
14 3 the court shall endeavor whenever possible to review the

14 4 petition and determine if the petition is based upon frivolous  
14 5 grounds. If the court determines that a petition is  
14 6 frivolous, the court shall deny the petition without a  
14 7 hearing.

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

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

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

14 25 If any provision of this chapter or the application thereof  
14 26 to any person or circumstances is held invalid, the invalidity  
14 27 shall not affect other provisions or applications of the  
14 28 chapter which can be given effect without the invalid  
14 29 provisions or application and, to this end, the provisions of  
14 30 this chapter are severable.

14 31 Sec. 16. NEW SECTION. 229B.15 RELEASE OF CONFIDENTIAL OR  
14 32 PRIVILEGED INFORMATION AND RECORDS.

14 33 Notwithstanding anything in chapter 22 to the contrary,  
14 34 relevant information and records which would otherwise be  
14 35 confidential or privileged shall be released to the agency  
15 1 with jurisdiction or the attorney general for the purpose of  
15 2 meeting the notice requirement provided in section 229B.3 and  
15 3 determining whether a person is or continues to be a  
15 4 dangerously violent person.

15 5 Sec. 17. NEW SECTION. 229B.16 COURT RECORDS SEALED  
15 6 AND OPENED BY COURT ORDER.

15 7 Any psychological reports, drug and alcohol reports,  
15 8 treatment records, reports of any diagnostic center, medical  
15 9 records, or victim impact statements which have been submitted  
15 10 to the court or admitted into evidence under this chapter  
15 11 shall be part of the record but shall be sealed and opened  
15 12 only on order of the court.

15 13 Sec. 18. NEW SECTION. 229B.17 SHORT TITLE.

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

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

15 19 (6) To the department of justice for purposes of review by  
15 20 the prosecutor's review committee or the commitment of  
15 21 sexually violent predators as provided in chapter 229A or the  
15 22 commitment of dangerously violent persons as provided in  
15 23 chapter 229B.

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

15 26 d. The department of justice for purposes of review by the  
15 27 prosecutor's review committee or the commitment of sexually  
15 28 violent predators as provided in chapter 229A or the  
15 29 commitment of dangerously violent persons as provided in  
15 30 chapter 229B.

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

15 33 d. The department of justice for purposes of review by the  
15 34 prosecutor's review committee or the commitment of sexually  
15 35 violent predators as provided in chapter 229A or the

16 1 commitment of dangerously violent persons as provided in  
16 2 chapter 229B.

16 3 Sec. 22. Section [235A.18](#), subsection 1, paragraphs a and  
16 4 b, Code Supplement 1999, are amended to read as follows:

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

16 23 b. Data sealed in accordance with this section shall be  
16 24 expunged eight years after the date the data was sealed.  
16 25 However, if the report data and the disposition data involve  
16 26 child abuse as defined in section 232.68, subsection 2,  
16 27 paragraphs "c" and "e", the data shall not be expunged for a  
16 28 period of thirty years. Sealed data shall be made available  
16 29 to the department of justice upon request if the prosecutor's  
16 30 review committee is reviewing records or if a prosecuting  
16 31 attorney has filed a petition to commit a sexually violent  
16 32 predator under chapter 229A or the commitment of dangerously  
16 33 violent persons as provided in chapter 229B.

16 34 Sec. 23. Section [815.7](#), Code Supplement 1999, is amended  
16 35 to read as follows:

17 1 815.7 FEES TO ATTORNEYS.

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

17 26 Sec. 24. Section [815.9](#), subsection 1, unnumbered paragraph  
17 27 1, Code Supplement 1999, is amended to read as follows:

17 28 For purposes of this chapter, chapter 13B, chapter 229A,  
17 29 chapter 229B, chapter 232, chapter 665, chapter 814, chapter  
17 30 822, and the rules of criminal procedure, a person is indigent  
17 31 if the person is entitled to an attorney appointed by the  
17 32 court as follows:

17 33 Sec. 25. Section [815.10](#), subsection 1, Code Supplement  
17 34 1999, is amended to read as follows:

17 35 1. The court, for cause and upon its own motion or upon  
18 1 application by an indigent person or a public defender, shall  
18 2 appoint the state public defender, the state public defender's  
18 3 designee pursuant to section 13B.4, or an attorney pursuant to  
18 4 section 13B.9 to represent an indigent person at any stage of  
18 5 the criminal, postconviction, contempt, commitment under  
18 6 chapter 229A or 229B, or juvenile proceedings or on appeal of  
18 7 any criminal, postconviction, contempt, commitment under  
18 8 chapter 229A or 229B, or juvenile action in which the indigent  
18 9 person is entitled to legal assistance at public expense.  
18 10 However, in juvenile cases, the court may directly appoint an  
18 11 existing nonprofit corporation established for and engaged in  
18 12 the provision of legal services for juveniles. An appointment  
18 13 shall not be made unless the person is determined to be  
18 14 indigent under section 815.9. Only one attorney shall be  
18 15 appointed in all cases, except that in class "A" felony cases  
18 16 the court may appoint two attorneys.

18 17 Sec. 26. Section [815.11](#), Code Supplement 1999, is amended  
18 18 to read as follows:

18 19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.  
18 20 Costs incurred under chapter 229A, 229B, 665, or 822, or  
18 21 section 232.141, subsection 3, paragraph "c", or sections  
18 22 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10,  
18 23 or the rules of criminal procedure on behalf of an indigent  
18 24 shall be paid from funds appropriated by the general assembly  
18 25 to the department of inspections and appeals for those  
18 26 purposes.

18 27 Sec. 27. Section [915.45](#), Code 1999, is amended to read as  
18 28 follows:

18 29 915.45 NOTICE TO VICTIMS OF DISCHARGE OF PERSONS  
18 30 COMMITTED.

18 31 In addition to any other information required to be  
18 32 released under chapter 229A or 229B, prior to the discharge of  
18 33 a person committed under chapter 229A or 229B, the director of  
18 34 human services shall give written notice of the person's  
18 35 discharge to any living victim of the person's activities or  
19 1 crime whose address is known to the director or, if the victim  
19 2 is deceased, to the victim's family, if the family's address  
19 3 is known. Failure to notify shall not be a reason for  
19 4 postponement of discharge. Nothing in this section shall  
19 5 create a cause of action against the state or an employee of  
19 6 the state acting within the scope of the employee's employment  
19 7 as a result of the failure to notify pursuant to this action.

19 8 EXPLANATION

19 9 This bill establishes a civil commitment procedure for  
19 10 dangerously violent persons.

19 11 The bill generally parallels the procedure for the  
19 12 commitment of sexually violent predators. The bill provides  
19 13 that the attorney general or a county attorney may petition to  
19 14 commence commitment proceedings against persons who have been  
19 15 convicted of a violent offense or who have been acquitted of a  
19 16 violent offense by reason of insanity or found incompetent to  
19 17 stand trial for such an offense.

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

19 30 whether the person referred to the committee meets the  
19 31 definition of a dangerously violent person and whether the  
19 32 person should be civilly committed.

19 33 A probable cause hearing must be conducted within 72 hours  
19 34 of the filing of a petition. A probable cause hearing may be  
19 35 continued upon a showing of good cause by either party or the  
20 1 court. If the court finds there is probable cause to believe  
20 2 that the person is a dangerously violent person, the court  
20 3 must direct that the person be transferred to an appropriate  
20 4 secure facility and that an evaluation of the person be  
20 5 conducted.

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

20 23 Under the bill a person committed as a dangerously violent  
20 24 person is to be evaluated on an annual basis to determine the  
20 25 person's mental condition. The court shall conduct an annual  
20 26 review and probable cause hearing on the status of the  
20 27 committed person. After the probable cause hearing, the  
20 28 committed person is entitled to a final hearing about whether  
20 29 there is still sufficient evidence to prove beyond a  
20 30 reasonable doubt that the person is a dangerously violent  
20 31 person and if discharged is likely to engage in violent acts.

20 32 The bill provides that if the director of human services  
20 33 determines the person's mental abnormality has so changed that  
20 34 the person is not likely to engage in violent acts if  
20 35 discharged, the director shall authorize the person to  
21 1 petition the court for release. Upon receipt of the petition  
21 2 the court shall order a hearing within 30 days and at such  
21 3 hearing the burden of proof shall be on the state to show  
21 4 beyond a reasonable doubt that the person's mental abnormality  
21 5 remains such that the person if discharged is likely to engage  
21 6 in violent acts. If the state has failed to meet its burden  
21 7 of proof, the court may release the person with or without  
21 8 community supervision.

21 9 Under the bill the person is entitled to petition the court  
21 10 for release at any time. The director of human services must  
21 11 also annually notify the person of the person's right to  
21 12 petition for such release. Although a committed person may  
21 13 petition for release at any time, if the committed person has  
21 14 previously filed a petition for release, and the court has  
21 15 determined that a previous petition was frivolous or that a  
21 16 committed person's condition has not changed sufficiently to  
21 17 warrant release, the court must deny the petition unless new  
21 18 facts are alleged which could support a contrary finding.

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

21 24 The bill provides that a person is entitled to counsel  
21 25 throughout any proceeding under this bill. The bill provides  
21 26 that the state public defender shall coordinate the legal

21 27 representation of an indigent person during any proceedings.  
21 28 The bill also provides that except for filing a petition and  
21 29 the subsequent trial to commit a dangerously violent person,  
21 30 the attorney general's office is responsible for representing  
21 31 the state's interest. Under the bill a local county attorney  
21 32 may file a petition to commit a person as a dangerously  
21 33 violent person and represent the state's interest during the  
21 34 subsequent trial.

21 35 The bill provides the attorney general with access to  
22 1 certain child abuse records when determining whether to file a  
22 2 petition alleging a person is a dangerously violent person for  
22 3 purposes of committing such a person. In addition, the bill  
22 4 provides that all founded child abuse records that are sealed  
22 5 shall still be available to the attorney general for purposes  
22 6 of the prosecutor's review committee's review of records or  
22 7 for committing a dangerously violent person. Such sealed data  
22 8 is to be expunged in 30 years, rather than eight years, after  
22 9 sealing.

22 10 LSB 6554SC 78

22 11 jm/cf/24