

Angelo, Hammond, Redfern

COMMENDED BY
JF2286

SSB 3141
Judiciary

SENATE/HOUSE FILE

BY (PROPOSED ATTORNEY GENERAL BILL)

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 sexually violent
2 predators.

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

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1 Section 1. Section 229A.1, unnumbered paragraph 2, Code
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for
4 rehabilitating sexually violent predators in a prison setting
5 is poor, because the treatment needs of this population are
6 very long-term, and the treatment modalities for this
7 population are very different from the traditional treatment
8 modalities available in a prison setting or for persons
9 appropriate for commitment under chapter 229. Therefore, the
10 general assembly finds that a civil commitment procedure for
11 the long-term care and treatment of the sexually violent
12 predator is necessary. The procedures regarding sexually
13 violent predators should reflect legitimate public safety
14 concerns, while providing treatment services designed to
15 benefit sexually violent predators who are civilly committed.
16 The procedures should also reflect the need to protect the
17 public, to respect the needs of the victims of sexually
18 violent offenses, and to encourage full meaningful
19 participation of sexually violent predators in treatment
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional
24 discharge from the sexually violent predator program. A
25 person released from an appropriate secure facility in a
26 transitional release program or released with or without
27 supervision is not considered to be discharged.

28 NEW SUBSECTION. 2B. "Dual commitment" means simultaneous
29 commitment pursuant to this chapter, and chapter 125, 229, or
30 812, if the commitments are not inconsistent.

31 NEW SUBSECTION. 6A. "Safekeeper" means a person who is
32 confined in an appropriate secure facility pursuant to this
33 chapter but who is not subject to an order of commitment
34 pursuant to this chapter.

35 NEW SUBSECTION. 10. "Transitional release" means a

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1 conditional release from a secure facility operated by the
2 department of human services with the conditions of such
3 release set by the court or the department of human services.

4 Sec. 3. Section 229A.2, subsection 5, Code 2001, is
5 amended to read as follows:

6 5. "Predatory" means acts directed toward a person with
7 whom a relationship contact or interaction has been
8 established or promoted for the primary purpose of
9 victimization making the person the object or victim of a
10 sexually violent offense.

11 Sec. 4. Section 229A.3, subsection 1, Code 2001, is
12 amended to read as follows:

13 1. When it appears that a person who is confined for any
14 public offense or pursuant to any court order or judgment may
15 meet the definition of a sexually violent predator, the agency
16 with jurisdiction shall give written notice to the attorney
17 general and the multidisciplinary team established in
18 subsection 4, no later than ninety days prior to any of the
19 following events:

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

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

30 c. The discharge or release of a person who has been found
31 not guilty by reason of insanity of a sexually violent
32 offense.

33 Sec. 5. Section 229A.4, subsection 1, Code 2001, is
34 amended to read as follows:

35 1. If it appears that a person presently confined for any

1 public offense or pursuant to any court order or judgment may
2 be a sexually violent predator and the prosecutor's review
3 committee has determined that the person meets the definition
4 of a sexually violent predator, the attorney general may file
5 a petition alleging that the person is a sexually violent
6 predator and stating sufficient facts to-support-such-an
7 allegation in a supporting statement.

8 Sec. 6. Section 229A.4, subsection 2, unnumbered paragraph
9 1, Code 2001, is amended to read as follows:

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

17 Sec. 7. Section 229A.4, subsection 2, paragraph a, Code
18 2001, is amended to read as follows:

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

22 Sec. 8. Section 229A.5, subsection 1, Code 2001, is
23 amended to read as follows:

24 1. INITIAL REVIEW. Upon filing of a petition under
25 section 229A.4, the court shall make-a-preliminary
26 determination-as-to-whether-probable-cause-exists-to-believe
27 that-the-person-named-in-the-petition-is-a-sexually-violent
28 predator conduct an initial review. 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

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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. In determining whether facts exist which would
4 lead a reasonable person to believe the person named in the
5 petition is a sexually violent predator, the court may rely
6 upon the petition and the supporting statement filed by the
7 state. The state may amend the petition and supporting
8 statement at any time. The Iowa rules of evidence do not
9 apply to an initial review, and no hearing shall be required.
10 The purpose of the initial review is to determine the
11 following:

12 a. The respondent's identity.
13 b. Whether competent evidence presented in the petition
14 and accompanying supporting statement present sufficient facts
15 to lead a reasonable person to believe the respondent is a
16 sexually violent predator.

17 Sec. 9. Section 229A.5, subsections 2, 3, 4, and 5, Code
18 2001, are amended by striking the subsections and inserting in
19 lieu thereof the following:

20 2. INITIAL REVIEW FINDINGS. Upon a finding that facts
21 exist which would lead a reasonable person to believe the
22 person named in the petition is a sexually violent predator,
23 the court shall direct that the person named in the petition
24 be detained in an appropriate secure facility and that the
25 person be served with a copy of the petition and any
26 supporting statement and notice of the procedures required by
27 this chapter. If the safekeeper is in custody at the time of
28 the filing of the petition, the court shall determine whether
29 a transfer of the safekeeper to an appropriate secure facility
30 is appropriate pending the outcome of the proceedings or
31 whether the custody order should be delayed until the date of
32 release of the person. The court shall also do all of the
33 following:

34 a. Order an evaluation to determine whether the safekeeper
35 is a sexually violent predator. The evaluation shall be

1 conducted by a person deemed to be professionally qualified to
2 conduct such an examination.

3 b. Set a trial within ninety days of the filing of the
4 petition.

5 c. Appoint an attorney to represent the safekeeper if
6 indigency is determined pursuant to section 815.9 as provided
7 in section 229A.6.

8 3. OBJECTION TO FINDING AND HEARING.

9 a. The safekeeper may move to object to the finding of the
10 court in subsection 2 within seventy-two hours of notification
11 of the attorney for the safekeeper, or if an attorney has not
12 been retained or appointed, within seventy-two hours of the
13 court's finding. The attorney for the safekeeper shall have
14 access to all petitions and reports in the possession of the
15 court. The following objections may be raised regarding the
16 initial review findings:

17 (1) The person named in the petition is not the
18 safekeeper.

19 (2) The person alleged to have committed the sexually
20 violent offenses in the petition is not the safekeeper.

21 (3) Competent evidence was not presented to show that
22 sufficient facts exist which would lead a reasonable person to
23 believe that the safekeeper is a sexually violent predator.

24 b. If the safekeeper objects to the initial review
25 findings and requests a hearing, the safekeeper may call
26 witnesses at the safekeeper's expense, and the state may call
27 witnesses at state expense, including the safekeeper, to
28 address the issues of the objection. The safekeeper and the
29 state may cross-examine witnesses who testify at the hearing,
30 but a party shall not compel the other party to call
31 witnesses.

32 c. The rules of evidence do not apply to an initial review
33 hearing.

34 d. The burden of proof shall be on the safekeeper to
35 demonstrate that facts do not exist to support a finding which

1 would lead a reasonable person to believe the safekeeper is a
2 sexually violent predator.

3 e. Within seventy-two hours of the hearing, the court
4 shall issue its written findings as to whether sufficient
5 facts exist to support a finding which would lead a reasonable
6 person to believe the safekeeper is a sexually violent
7 predator. The court must make a specific written finding as
8 to whether sufficient facts exist or do not exist. If the
9 court fails to enter its written findings within seventy-two
10 hours of the hearing, either party may petition the supreme
11 court to order the district court to issue its findings. If
12 sufficient facts exist, the case shall proceed to trial.
13 However, if sufficient facts do not exist, the court shall
14 notify the parties immediately after issuing the ruling and
15 permit the state twenty-four hours to amend the petition and
16 supporting statement with additional facts to support the
17 filing of the petition.

18 f. The procedures for the hearing on the amended petition
19 shall be the same as provided in this section, except the
20 court shall issue its findings within twenty-four hours of the
21 hearing. If after the hearing on the amended petition the
22 court finds that sufficient facts still do not exist or that
23 the state did not allege additional facts to support its
24 amended petition, the court shall enter a final order of
25 dismissal unless an emergency appeal is filed by the state.

26 g. The state may make an immediate emergency appeal to the
27 supreme court, based upon whether sufficient facts exist to
28 support the petition or amended petition. The appeal shall be
29 de novo.

30 (1) If the supreme court finds that sufficient facts exist
31 to support the petition or amended petition, the case shall be
32 remanded to the district court for trial.

33 (2) If the supreme court finds that sufficient facts do
34 not exist to support the petition or amended petition, the
35 case shall be remanded to the district court for a final order

1 of dismissal.

2 h. The safekeeper shall remain confined until the petition
3 is dismissed by the state or the court enters a final order of
4 dismissal.

5 i. If the petition is dismissed, the safekeeper shall be
6 released but shall comply with any requirements to register as
7 a sex offender as provided in chapter 692A.

8 j. A finding in an initial review hearing is not a final
9 judgment.

10 k. The safekeeper may request a continuance of a hearing
11 under this section for good cause shown. Any continuance
12 granted does not necessarily continue the trial date.

13 l. The safekeeper may raise additional objections in other
14 pretrial motions as provided in the Iowa rules of civil
15 procedure. Failure to object to the findings of an initial
16 review pursuant to this section does not constitute a waiver
17 of those objections.

18 Sec. 10. Section 229A.5B, Code Supplement 2001, is amended
19 to read as follows:

20 229A.5B ESCAPE FROM CUSTODY.

21 1. A respondent person who is in-custody detained pursuant
to section 229A.5 or is subject to an order of civil
commitment under this chapter shall remain in custody unless
24 released by court order or discharged under section 229A.8 or
25 229A.10. A person who has been placed in a transitional
26 release program or who is under release with or without
27 supervision is considered to be in custody. A respondent
28 person in custody under this chapter shall not do any of the
29 following:

30 a. Leave or attempt to leave a facility without the
31 accompaniment of authorized personnel or leave or attempt to
32 leave a facility without authorization.

33 b. Knowingly and voluntarily be absent from a place where
34 the respondent person is required to be present.

35 c. Leave or attempt to leave the custody of personnel

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1 transporting or guarding the respondent person while the
2 respondent person is away from a facility.

3 2. A respondent person who violates subsection 1 commits a
4 simple misdemeanor or may be subject to punishment for
5 contempt. If-the-respondent-pleads-guilty-to,-or-is-convicted
6 of,-an-offense-under-this-section,-or-is-found-in-contempt,-or
7 both,-and-is-sentenced-to-a-term-of-confinement,-the-civil
8 commitment-proceedings-or-treatment-process-may-be-stayed-by
9 court-order-until-the-term-of-confinement-is-served-by-the
10 respondent-

11 3. If a respondent person commits a violation of
12 subsection 1 and remains unconfined, the attorney general or
13 the chief law enforcement officer of the political subdivision
14 where the violation occurs may make a public announcement that
15 the respondent person is unconfined and may provide relevant
16 information about the respondent person to the community. The
17 attorney general may also notify a victim or the family of a
18 victim of the respondent person that the respondent person is
19 unconfined.

20 4. This section shall not be construed to prohibit the use
21 of the-interstate-compact-on-mental-health-as-provided-in
22 chapter-22‡ other lawful means for the return of the person.

23 Sec. 11. NEW SECTION. 229A.5C CRIMINAL OFFENSES
24 COMMITTED WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

25 1. If a person who is detained pursuant to section 229A.5
26 or who is subject to an order of civil commitment under this
27 chapter commits a public offense, the civil commitment
28 proceedings or treatment process shall be suspended until the
29 criminal proceedings, including any term of confinement, are
30 completed. The person shall also not be eligible for bail
31 pursuant to section 811.1.

32 2. Upon the filing of a complaint, indictment, or
33 information, the person shall be transferred to the county
34 jail in the county where the public offense occurred until the
35 criminal proceedings have been completed. If the person is

1 sentenced to a term of confinement in a county jail, the
2 person shall serve the sentence at the county jail. If the
3 person is sentenced to the custody of the director of the
4 department of corrections, the person shall serve the sentence
5 at a correctional institution.

6 3. A person shall not be released from jail or paroled or
7 released to a facility or program located outside the county
8 jail or correctional institution other than to a secure
9 facility operated by the department of human services.

10 4. A person who committed a public offense while in a
11 transitional release program or on release with or without
12 supervision may be returned to a secure facility operated by
13 the department of human services upon completion of any term
14 of confinement that resulted from the commission of the public
15 offense.

16 5. If the civil commitment proceedings for a person are
17 suspended due to the commission of a public offense by the
18 person, the ninety-day trial demand lapses. Upon completion
19 of any term of confinement that resulted from the commission
20 of the public offense, a new ninety-day trial demand
21 automatically begins.

22 Sec. 12. NEW SECTION. 229A.5D MEDICAL TREATMENT.

23 A safekeeper is entitled to necessary medical treatment.

24 Sec. 13. Section 229A.6, subsection 2, Code 2001, is
25 amended to read as follows:

26 2. If a respondent is not indigent and is subjected to an
27 examination under this chapter, the respondent may retain
28 experts or professional persons to perform an independent
29 examination on the respondent's behalf. ~~If-the-respondent~~
~~wishes-to-be-examined-by-a-qualified-expert-or-professional~~
~~person-of-the-respondent's-own-choice,-the-examiner-of-the~~
~~respondent's-choice-shall-be-given-reasonable-access-to-the~~
~~respondent-for-the-purpose-of-the-examination,-as-well-as~~
~~access-to-all-relevant-medical-and-psychological-records-and~~
~~reports~~ If the respondent retains an expert or professional

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1 person, the respondent shall notify the state that an
2 examination is being performed while in custody.

3 3. If the respondent is indigent, the court, upon the
4 respondent's request, shall determine whether the services are
5 necessary and the reasonable compensation for the services.
6 If the court determines that the services are necessary and
7 the requested compensation for the services is reasonable, the
8 court shall assist the respondent in obtaining an expert or
9 professional person to perform an examination or participate
10 in the trial on the respondent's behalf. The court shall
11 approve payment for such services upon the filing of a
12 certified claim for compensation supported by a written
13 statement specifying the time expended, services rendered,
14 expenses incurred on behalf of the respondent, and
15 compensation received in the same case or for the same
16 services from any other source. However, the respondent shall
17 reimburse the state for the expenses and compensation of the
18 expert or professional as provided in section 815.9.

19 4. The expert or professional shall be given reasonable
20 access to the respondent for the purpose of the examination,
21 as well as access to all relevant medical and psychological
22 records and reports. An attorney for the state or the
23 respondent shall not be present during any examination of the
24 respondent while the respondent is in custody.

25 Sec. 14. NEW SECTION. 229A.6A TRANSPORT ORDERS.

26 1. A person who has been detained prior to trial pursuant
27 to section 229A.5 or who has been civilly committed may be
28 transported for the following purposes:

29 a. To trial and any other court proceedings if the court
30 has authorized a transport order. A transport order may only
31 be requested by the court, the person's attorney, or the
32 attorney general. Transportation shall be provided by the
33 sheriff of the county in which the action has been brought,
34 unless the court specifies otherwise or the parties agree to a
35 different transportation arrangement. If a transport order is

1 not authorized, the person may appear at any court proceedings
2 other than trial by telephone or electronic means.

3 b. To a medical facility for medical treatment, if
4 necessary medical treatment is not available at the facility
5 where the person is confined. A transport order is not
6 required to transport the person for medical treatment.
7 However, the person is not entitled to choose the medical
8 facility where treatment is to be obtained or the medical
9 personnel to provide the treatment. Transportation shall be
10 provided by the sheriff of the county in which the person is
11 confined.

12 c. To a medical, psychological, or psychiatric evaluation.
13 A person shall not be transported to another facility for
14 evaluation without a court order. When a transportation order
15 is requested under this paragraph, notice must be provided to
16 the opposing party, and the opposing party must be given a
17 reasonable amount of time to object to the issuance of such an
18 order. The cost of the transportation shall be paid by the
19 party who requests the order.

20 d. To a facility for placement in a transitional release
21 program or for release with or without supervision. A
22 transport order is not required under this paragraph.
23 Transportation shall be provided by the department of human
24 services.

25 2. This section shall not be construed to grant a person
26 the right to personally appear at all court proceedings under
27 this chapter.

28 Sec. 15. Section 229A.7, subsection 2, Code 2001, is
29 amended to read as follows:

30 2. Within-ninety-days-after-either-the-entry-of-the-order
waving-the-probable-cause-hearing-or-completion-of-the
probable-cause-hearing-held-under-section-229A.57-the-court
shall-conduct-a-trial-to-determine-whether-the-respondent-is-a
sexually-violent-predator. The respondent or the attorney for
the respondent may waive the ninety-day trial requirement as

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1 provided in section 229A.5; however, the respondent or the
2 attorney for the respondent may reassert a demand and the
3 trial shall be held within ninety days from the date of filing
4 the demand with the clerk of court. The trial may be
5 continued upon the request of either party and a showing of
6 good cause, or by the court on its own motion in the due
7 administration of justice, and when the respondent will not be
8 substantially prejudiced. In determining what constitutes
9 good cause, the court shall consider the length of the
10 pretrial detention of the respondent.

11 2A. The respondent, the attorney general, or the judge
12 shall have the right to demand that the trial be before a
13 jury. Such demand for the trial to be before a jury shall be
14 filed, in writing, at least ten days prior to trial. ~~The~~
~~number-and-selection-of-jurors-shall-be-determined-as-provided~~
~~in-chapter-607A-~~ If no demand is made, the trial shall be
17 before the court. Except as otherwise provided, the Iowa
18 rules of evidence and the Iowa rules of civil procedure shall
19 apply to all civil commitment proceedings initiated pursuant
20 to this chapter.

21 Sec. 16. Section 229A.7, Code 2001, is amended by adding
22 the following new subsections:

23 NEW SUBSECTION. 2B. Evidence regarding prior sexually
24 violent offenses committed by the respondent, whether charges
25 were filed or not filed, including the facts and circumstances
26 of the prior offenses, is relevant and probative of a risk to
27 reoffend, and of a mental abnormality, and shall be admitted
28 into evidence at trial. The evidence may be presented in
29 document form, including but not limited to initial review
30 transcripts, trial transcripts, probation and sentencing
31 reports, and evaluations by a mental health expert. Any Iowa
32 rule of evidence in contravention of this subsection is void
33 when applied to a civil commitment proceeding under this
34 chapter.

35 NEW SUBSECTION. 2C. Testimony by the victim of a prior

1 sexually violent offense committed by the respondent, or by
2 witnesses to prior sexually violent offenses committed by the
3 respondent, whether criminal charges were filed or not filed,
4 is relevant and probative of a risk to reoffend and of a
5 mental abnormality, even if the respondent did not admit to
6 the conduct of the prior offense, and is admissible at trial.
7 Testimonial evidence may be presented by telephone or
8 electronic means, by videotape, or by prior sworn testimony.
9 Evidence of a victim's past sexual behavior is not admissible.
10 Any Iowa rule of evidence in contravention of this subsection
11 is void when applied to a civil commitment proceeding under
12 this chapter.

13 Sec. 17. Section 229A.7, subsections 3, 4, and 5, Code
14 2001, are amended to read as follows:

15 3. At trial, the court or jury shall determine whether,
16 beyond a reasonable doubt, the respondent is a sexually
17 violent predator and there shall be no presumption to commit
or not to commit. If the determination-that-the-respondent-is
19 a-sexually-violent-predator-is-made-by-a-jury,-the
20 determination case is before a jury, the verdict shall be by
21 unanimous verdict-of-such-jury that the respondent is a
22 sexually violent predator.

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

30 4. The control, care, and treatment of a person determined
31 to be a sexually violent predator shall be provided at a
32 facility operated by the department of human services. At all
33 times prior to placement in a transitional release program or
34 release with or without supervision, persons committed for
35 control, care, and treatment by the department of human

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1 services pursuant to this chapter shall be kept in a secure
2 facility and those patients shall be segregated at all times
3 from any other patient under the supervision of the department
4 of human services. A person committed pursuant to this
5 chapter to the custody of the department of human services may
6 be kept in a facility or building separate from any other
7 patient under the supervision of the department of human
8 services. The department of human services may enter into a
9 chapter 28E agreement with the department of corrections or
10 other appropriate agency in this state or another state for
11 the confinement of patients who have been determined to be
12 sexually violent predators. Patients who are in the
13 confinement custody of the director of the department of
14 corrections pursuant to a chapter 28E agreement and who have
not been placed in a transitional release program or released
with or without supervision shall be housed and managed
17 separately from criminal offenders in the custody of the
18 director of the department of corrections, and except for
19 occasional instances of supervised incidental contact, shall
20 be segregated from those offenders.

21 5. If the court makes the determination or the jury is-not
22 satisfied-beyond-a-reasonable-doubt determines by a unanimous
23 verdict that the respondent is not a sexually violent
24 predator, the court shall direct the respondent's release.
25 Upon release, the respondent shall comply with any
26 requirements to register as a sex offender as provided in
27 chapter 692A. Upon a mistrial, the court shall direct that
28 the respondent be held at an appropriate secure facility until
29 another trial is conducted. Any subsequent trial following a
30 mistrial shall be held within ninety days of the previous
31 trial, unless such subsequent trial is continued or the ninety
32 days are waived as provided in subsection 2.

33 Sec. 18. NEW SECTION. 229A.7A DUAL COMMITMENT.

34 1. Civil commitment proceedings and control, care, and
35 treatment pursuant to this chapter shall have priority for the

1 purpose of treatment over commitments pursuant to chapter 125,
2 229, or 812.

3 2. Commitment proceedings pursuant to chapter 125, 229, or
4 812 may be initiated against a person who is detained pursuant
5 to section 229A.5 or subject to an order of civil commitment
6 under this chapter. Commitment proceedings pursuant to
7 chapter 125, 229, or 812 may be initiated at any time after
8 the filing of a petition pursuant to section 229A.4, including
9 during the trial, during transitional release, or release with
10 or without supervision.

11 3. If a person is subject to a dual commitment, the person
12 may receive appropriate services pursuant to chapter 125, 229,
13 or 812 as long as the services are consistent with the
14 purposes of this chapter.

15 4. The director of human services shall coordinate the
16 payment of costs for control, care, and treatment of a person
17 under a dual commitment. If services pursuant to chapter 125,
18 229, or 812 have been provided to a person who is under a dual
19 commitment, the services shall be paid for as provided in that
20 chapter.

21 5. An attorney appointed to represent a person under this
22 chapter shall not represent the person in a dual commitment
23 proceeding pursuant to chapter 125, 229, or 812.

24 6. For purposes of this chapter, venue for a dual
25 commitment proceeding pursuant to chapter 125, 229, or 812
26 shall be in the county where the petition pursuant to section
27 229A.4 is filed.

28 7. No other action may be joined with a dual commitment
29 proceeding.

30 Sec. 19. Section 229A.8, Code 2001, is amended to read as
31 follows:

32 229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR
33 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

34 1. Upon civil commitment of a person pursuant to this
35 chapter, a rebuttable presumption exists that the commitment

1 should continue. The presumption may be rebutted when facts
2 exist to warrant a hearing to determine whether a committed
3 person no longer suffers from a mental abnormality which makes
4 the person likely to engage in predatory acts constituting
5 sexually violent offenses if not confined in a secure
6 facility, or the committed person is suitable for placement in
7 a transitional release program.

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

15 2- 3. The annual report shall be provided to the court
16 that committed the person under this chapter. The court shall
17 conduct an annual review and probable-cause, if warranted, set
18 a final hearing on the status of the committed person. The
19 annual review may be based only on written records.

20 3- 4. Nothing contained in this chapter shall prohibit the
21 person from otherwise petitioning the court for discharge or
22 placement in a transitional release program at the probable
23 cause-hearing annual review. The director of human services
24 shall provide the committed person with an annual written
25 notice of the person's right to petition the court for
26 discharge or placement in a transitional release program over
27 the director's objection. The notice shall contain a waiver
28 of rights. The director shall forward the notice and waiver
29 form to the court with the annual report.

30 4- 5. The following provisions apply to an annual review:

31 a. The committed person shall have a right to have an
32 attorney represent the person at-the-probable-cause-hearing
33 but the person is not entitled to be present at the hearing,
34 if a hearing is held. If-the-court-at-the-hearing-determines
35 that-probable-cause-exists-to-believe-that-the-person's

- 1 b. The Iowa rules of evidence do not apply.
- 2 c. The committed person may waive an annual review or may
- 3 stipulate that the commitment should continue for another
- 4 year.
- 5 d. The court shall review the annual report of the state
- 6 and the report of any qualified expert or professional person
- 7 retained by or appointed for the committed person and may
- 8 receive arguments from the attorney general and the attorney
- 9 for the committed person if either requests a hearing. The
- 10 request for a hearing must be in writing, within ten days of
- 11 the filing of the notice of annual review, or on motion by the
- 12 court. Such a hearing may be conducted in writing without any
- 13 attorneys present.
- 14 e. The burden is on the committed person to show by a
- 15 preponderance of the evidence that there is competent evidence
- 16 which would lead a reasonable person to believe a final
- 17 hearing should be held to determine either of the following:
- 18 (1) The mental abnormality of the committed person has so
- 19 changed that the person is safe-to-be-at-large-and-will not
- 20 likely to engage in predatory acts or constituting sexually
- 21 violent offenses if discharged,--then-the-court-shall-set-a
- 22 final-hearing-on-the-issue.
- 23 (2) The committed person is suitable for placement in a
- 24 transitional release program pursuant to section 229A.8A.
- 25 If the committed person shows by a preponderance of the
- 26 evidence that a final hearing should be held on either
- 27 determination under subparagraph (1) or (2), or both, the
- 28 court shall set a final hearing within sixty days of the
- 29 determination that a final hearing be held.
- 30 f. If at the time for the annual review the committed
- 31 person has filed a petition for discharge or placement in a
- 32 transitional release program with authorization from the
- 33 director of human services, the court shall set a final
- 34 hearing within ninety days of the authorization by the
- 35 director, and no annual review shall be held.

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1 g. If the committed person has not filed a petition, or
2 has filed a petition for discharge or for placement in a
3 transitional release program without authorization from the
4 director of human services, the court shall first conduct the
5 annual review as provided in this subsection.

6 h. Any petition can summarily be dismissed by the court as
7 provided in section 229A.11.

8 i. If at the time of the annual review the committed
9 person is in a secure facility and not in the transitional
10 release program, the state shall have the right to demand that
11 both determinations in paragraph "c" be submitted to the court
12 or jury.

13 5. At-the-final-hearing,-the The following provisions
14 shall apply to a final hearing:

15 a. The committed person shall be entitled to be-present an
16 attorney and is entitled to the benefit of all constitutional
17 protections that were afforded the person at the original
18 commitment proceeding. The-attorney-general-shall-represent
19 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have
20 the-committed-person-evaluated-by-experts-chosen-by-the-state
21 committed person shall be entitled to a jury trial, if such a
22 demand is made in writing and filed with the clerk of court at
23 least ten days prior to the final hearing.

24 b. The committed person shall also have the right to have
25 experts evaluate the person on the person's behalf. The court
26 shall appoint an expert if the person is indigent and requests
27 an appointment.

28 c. The attorney general shall represent the state and
29 shall have a right to demand a jury trial. The jury demand
30 shall be filed, in writing, at least ten days prior to the
31 final hearing.

32 d. The burden of proof at the final hearing shall be upon
33 the state to prove beyond a reasonable doubt that-the either
34 of the following:

35 (1) The committed person's mental abnormality or

1 personality-disorder remains such that the person is-not-safe
2 to-be-at-large-and-if-discharged is likely to engage in acts
3 of-sexual-violence predatory acts that constitute sexually
4 violent offenses if discharged.

5 (2) The committed person is not suitable for placement in
6 a transitional release program pursuant to section 229A.8A.

7 e. If the case is submitted to a jury, the verdict of the
8 jury must be unanimous as to whether to discharge the person
9 or to place the person in a transitional program.

10 f. If a mistrial is declared, the confinement or placement
11 status of the committed person shall not change. After a
12 mistrial has been declared, a new trial must be held within
13 ninety days of the mistrial.

14 6. The state and the committed person may stipulate to a
15 transfer to a transitional release program if the court
16 approves the stipulation.

17 Sec. 20. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

18 1. The department of human services is authorized to
19 establish a transitional release program and provide control,
20 care, and treatment, and supervision of committed persons
21 placed in such a program.

22 2. A committed person is suitable for placement in the
23 transitional release program if all of the following apply:

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

26 b. The committed person has achieved and demonstrated
27 significant insights into the person's sex offending cycle.

28 c. The committed person has accepted responsibility for
29 past behavior and understands the impact sexually violent
30 crimes have upon a victim.

31 d. A detailed relapse prevention plan has been developed
32 and accepted which is appropriate for the committed person's
33 mental abnormality and sex offending history.

34 e. No major discipline reports have been issued for the
35 committed person for a period of one year.

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1 f. The committed person is not likely to escape or attempt
2 to escape custody pursuant to section 229A.5B.

3 g. The committed person is not likely to commit acts
4 constituting sexually violent offenses while in the program.

5 h. The placement is in the best interest of the committed
6 person.

7 i. The committed person has demonstrated a willingness to
8 agree to and abide by all rules of the program.

9 3. If the committed person does not agree to the
10 conditions of release, the person is not eligible for the
11 transitional release program.

12 4. For purposes of registering as a sex offender under
13 chapter 692A, a person placed in the transitional release
14 program shall be classified a "high-risk" sex offender and
15 public notification shall be as provided in section 692A.13A,
16 subsection 2. A committed person who refuses to register as a
17 sex offender is not eligible for placement in a transitional
18 release program.

19 5. Committed persons in the transitional release program
20 are not necessarily required to be segregated from other
21 persons.

22 6. The department of human services shall be responsible
23 for establishing and implementing the rules and directives
24 regarding the location of the transitional release program,
25 staffing needs, restrictions on confinement and the movement
26 of committed persons, and for assessing the progress of
27 committed persons in the program. The court may also impose
28 conditions on a committed person placed in the program.

29 7. The department of human services may contract with
30 other government or private agencies, including the department
31 of corrections, to implement and administer the transitional
32 release program.

33 Sec. 21. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL
34 RELEASE.

35 1. The treatment staff in a transitional release program

1 may remove the committed person from the program for a
2 violation of any rule or directive, and return the person to a
3 secure facility. The treatment staff may request the district
4 court to issue an emergency ex parte order directing any law
5 enforcement officer to take the committed person into custody
6 so that the person can be returned to a secure facility. The
7 request for an ex parte order may be made orally or by
8 telephone, but the original written request or a facsimile
9 copy of the original request shall be filed with the clerk of
10 court no later than four-thirty p.m. on the next business day
11 the office of the clerk of court is open.

12 2. If a committed person absconds from a transitional
13 release program in violation of the rules or directives, a
14 presumption arises that the person poses a risk to public
15 safety. The department of human services, in cooperation with
16 local law enforcement agencies, may make a public announcement
17 about the absconder. The public announcement may include a
18 description of the committed person, that the person is in
19 transitional release from the sexually violent predator
20 program, and any other information important to public safety.

21 3. Upon the return of the committed person to a secure
22 facility, the director of human services or the director's
23 designee shall notify the court that issued the ex parte order
24 that the absconder has been returned to a secure facility, and
25 the court shall set a hearing within five days to determine if
26 a violation occurred. If a court order was not issued, the
27 director or the director's designee shall contact the nearest
28 district court with jurisdiction to set a hearing to determine
29 whether a violation of the rules or directives occurred. The
30 court shall schedule a hearing within five days of receiving
31 notice that the committed person has been returned from the
32 transitional release program to a secure facility.

33 4. At the hearing the burden shall be upon the attorney
34 general to show by a preponderance of the evidence that a
35 violation of the rules or directives occurred. The hearing

1 shall be to the court.

2 5. If the court determines a violation occurred, the court
3 shall either order the committed person to be returned to the
4 transitional release program or to be confined in a secure
5 facility. The court may impose further conditions upon the
6 committed person if returned to the transitional release
7 program. If the court determines no violation occurred, the
8 committed person shall be returned to the transitional release
9 program.

10 Sec. 22. NEW SECTION. 229A.9A RELEASE WITH SUPERVISION.

11 1. In any proceeding under section 229A.8, the court may
12 order the committed person released from a secure facility
13 with or without supervision if any of the following apply:
14 a. The state stipulates to the release with or without
15 supervision.

16 b. The court or jury has determined that the person should
17 be discharged from the program, but the court has determined
18 it is in the best interest of the community to order release
19 with or without supervision before the committed person is
20 discharged.

21 2. If release with or without supervision is ordered, the
22 department of human services shall prepare within thirty days
23 of the order of the court a release plan addressing the
24 person's needs for counseling, medication, community support
25 services, residential services, vocational services, alcohol
26 or other drug abuse treatment, sex offender treatment, or any
27 other treatment or supervision necessary.

28 3. The court shall set a hearing on the release plan
29 prepared by the department of human services before the
30 committed person is released from a secure facility or a
31 transitional release program.

32 4. If the court orders release with supervision, the court
33 shall order supervision by an agency with jurisdiction that is
34 familiar with the placement of criminal offenders in the
35 community. The agency with jurisdiction shall be responsible

1 for initiating proceedings for violations of the release plan
2 as provided in section 229A.9B. If the court orders release
3 without supervision, the agency with jurisdiction shall also
4 be responsible for initiating proceedings for any violations
5 of the release plan as provided in section 229A.9B.

6 5. A committed person may not petition the court for
7 release with or without supervision.

8 6. A committed person released with or without supervision
9 is not considered discharged from civil commitment under this
10 chapter.

11 7. After being released with or without supervision, the
12 person may petition the court for discharge as provided in
13 section 229A.8.

14 Sec. 23. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH
15 OR WITHOUT SUPERVISION.

16 1. If a committed person violates the release plan, the
17 agency with jurisdiction over the person may request the
18 district court to issue an emergency ex parte order directing
19 any law enforcement officer to take the person into custody so
20 that the person can be returned to a secure facility. The
21 request for an ex parte order may be made orally or by
22 telephone, but the original written request or a facsimile
23 copy of the request shall be filed with the clerk of court no
24 later than four-thirty p.m. on the next business day the
25 office of the clerk of court is open.

26 2. If a committed person has absconded in violation of the
27 conditions of the person's release plan, a presumption arises
28 that the person poses a risk to public safety. The department
29 of human services, in cooperation with local law enforcement
30 agencies, may make a public announcement about the absconder.
31 The public announcement may include a description of the
32 committed person, that the committed person is on release with
33 or without supervision from the sexually violent predator
34 program, and any other information pertinent to public safety.

35 3. Upon the return of the committed person to a secure

1 facility, the director of human services or the director's
2 designee shall notify the court that issued the ex parte order
3 that the committed person has been returned to a secure
4 facility, and the court shall set hearing within five days to
5 determine if a violation occurred. If a court order was not
6 issued, the director or the director's designee shall contact
7 the nearest district court with jurisdiction to set a hearing
8 to determine whether a violation of the conditions of the
9 release plan occurred. The court shall schedule a hearing
10 within five days of receiving notice that the committed person
11 has been returned to a secure facility.

12 4. At the hearing the burden shall be upon the attorney
13 general to show by a preponderance of the evidence that a
14 violation of the release plan occurred.

15 5. If the court determines a violation occurred, the court
16 shall either order that the committed person be returned to
17 release with or without supervision or placed in a
18 transitional release program, or be confined in a secure
19 facility. The court may impose further conditions upon the
20 committed person if returned to release with or without
21 supervision or placed in the transitional release program. If
22 the court determines no violation occurred, the committed
23 person shall be returned to release with or without
24 supervision.

25 Sec. 24. Section 229A.10, Code 2001, is amended to read as
26 follows:

27 **229A.10 PETITION FOR DISCHARGE -- PROCEDURE.**

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

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

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

26 Sec. 25. Section 229A.11, Code 2001, is amended to read as
27 follows:

28 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.
29 Nothing in this chapter shall prohibit a person from filing
30 a petition for discharge or placement in a transitional
31 release program, pursuant to this chapter. However, if a
32 person has previously filed a petition for discharge or for
33 placement in a transitional release program without the
34 authorization of the director of human services, and the court
35 determines either upon review of the petition or following a

1 hearing that the petition was frivolous or that the
2 petitioner's condition had not so changed that the person was
3 safe-to-be-at-large not likely to engage in predatory acts
4 constituting sexually violent offenses if discharged, or was
5 not suitable for placement in the transitional release
6 program, then the court shall summarily deny the subsequent
7 petition unless the petition contains facts upon which a court
8 could find the condition of the petitioner had so changed that
9 a hearing was warranted. Upon receipt of a first or
10 subsequent petition from a committed person without the
11 director's authorization, the court shall endeavor whenever
12 possible to review the petition and determine if the petition
13 is based upon frivolous grounds. If the court determines that
14 a petition is frivolous, the court shall deny dismiss the
15 petition without a hearing.

16 Sec. 26. Section 229A.12, Code 2001, is amended to read as
17 follows:

18 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR
19 COSTS -- REIMBURSEMENT.

20 The director of human services shall be responsible for all
21 costs relating to the evaluation, treatment, and services
22 provided to persons committed to the director's custody after
23 the court or jury determines that the respondent is a sexually
24 violent predator and pursuant to commitment under any
25 provision of this chapter. If placement in a transitional
26 release program or supervision is ordered pursuant-to-section
27 229A.10, the director shall also be responsible for all costs
28 related to the transitional release program or to the
29 supervision and treatment of any person. Reimbursement may be
30 obtained by the director from the patient and any person
31 legally liable or bound by contract for the support of the
32 patient for the cost of confinement, or of care and treatment
33 provided. As used in this section, "any person legally
34 liable" does not include a political subdivision.

35 Sec. 27. NEW SECTION. 229A.12A DIRECTOR OF THE

1 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.
2 The director of the department of corrections shall have
3 authority, once a person is detained pursuant to section
4 229A.5, to make a determination as to which appropriate secure
5 facility the safekeeper is to be placed, taking into
6 consideration the safekeeper's medical needs and ability to
7 interact with offenders who have been committed to the custody
8 of the director of the department of corrections. The
9 director has authority to determine the safekeeper's degree of
10 segregation from offenders, including whether total
11 segregation is appropriate under the circumstances or whether
12 the safekeeper should be permitted to participate in normal
13 confinement activities in the presence of offenders.

14 Sec. 28. Section 229A.14, Code 2001, is amended to read as
15 follows:

16 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION
17 AND RECORDS.

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

26 Sec. 29. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

27 A victim of a crime that was committed by a safekeeper or
28 by a person subjected to an order of civil commitment pursuant
29 to this chapter, may obtain a protective order against the
30 safekeeper or person using the procedures set out in section
31 915.22.

32 Sec. 30. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

33 The department of human services shall adopt rules pursuant
34 to chapter 17A necessary to administer this chapter.

35 Sec. 31. Section 811.1, subsections 1 and 2, Code 2001,

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1 are amended to read as follows:

2 1. A defendant awaiting judgment of conviction and
3 sentencing following either a plea or verdict of guilty of a
4 class "A" felony, murder, any class "B" felony included in
5 section 462A.14 or 707.6A; felonious assault; felonious child
6 endangerment; sexual abuse in the second degree; sexual abuse
7 in the third degree; kidnapping; robbery in the first degree;
8 arson in the first degree; burglary in the first degree; any
9 felony included in section 124.401, subsection 1, paragraph
10 "a" or "b"; or a second or subsequent offense under section
11 124.401, subsection 1, paragraph "c"; or any felony punishable
12 under section 902.9, subsection 1; any public offense
13 committed while detained pursuant to section 229A.5; or any
14 public offense committed while subject to an order of
15 commitment pursuant to chapter 229A.

16 2. A defendant appealing a conviction of a class "A"
17 felony; murder; any class "B" or "C" felony included in
18 section 462A.14 or 707.6A; felonious assault; felonious child
19 endangerment; sexual abuse in the second degree; sexual abuse
20 in the third degree; kidnapping; robbery in the first degree;
21 arson in the first degree; burglary in the first degree; any
22 felony included in section 124.401, subsection 1, paragraph
23 "a" or "b"; or a second or subsequent conviction under section
24 124.401, subsection 1, paragraph "c"; or any felony punishable
25 under section 902.9, subsection 1; any public offense
26 committed while detained pursuant to section 229A.5; or any
27 public offense committed while subject to an order of
28 commitment pursuant to chapter 229A.

29 Sec. 32. IMPLEMENTATION OF ACT. Section 25B.2, subsection
30 3, shall not apply to this Act.

31 Sec. 33. DIRECTIVE TO CODE EDITOR. The Code editor is
32 directed to renumber sections in chapter 229A and correct
33 internal references as necessary in conjunction with the
34 enactment of this Act.

35

EXPLANATION

1 This bill makes numerous changes to the sexually violent
2 predator Act in Code chapter 229A.

3 DEFINITIONS. The bill defines "safekeeper" to mean a
4 person who is confined in an appropriate secure facility, but
5 who is not subject to an order of commitment. The bill
6 defines "discharge" to mean an unconditional discharge from
7 the sexually violent predator program. The bill changes the
8 definition of "predatory" to mean an act directed toward a
9 person with whom contact or interaction has been established
10 or promoted for the primary purpose of making the person the
11 object or victim of a sexually violent offense. The bill
12 permits the dual civil commitment of a person and defines
13 "dual commitment" to mean a simultaneous commitment pursuant
14 to Code chapter 229A and Code chapter 125, 229, or 812,
15 provided the commitments are not inconsistent. The bill
16 creates a transitional release program and defines
17 "transitional release" to mean a conditional release from a
18 secure facility with conditions of such a release set by the
19 court or the department of human services.

20 INITIAL REVIEW. The bill provides that upon the filing of
21 a petition to commit a sexually violent predator, the court
22 shall conduct an initial review of the petition and supporting
23 statements to verify the identity of the person named in the
24 petition, and to determine whether competent evidence was
25 presented to show sufficient facts exist which would lead a
26 reasonable person to believe the person named in the petition
27 is a sexually violent predator. The bill provides that in
28 determining whether sufficient facts exist, the court may rely
29 on the petition and supporting statement filed by the state
30 and no hearing is required. If the court finds sufficient
31 facts do exist, the bill requires the court to order the
32 person be taken into custody and placed in an appropriate
33 secure facility, if the person is not already in custody.
34 Upon a finding that sufficient facts do exist, the bill also
35 provides that the court shall order an evaluation of the

1 person be conducted, set trial within 90 days of the initial
2 review, and appoint an attorney to represent the respondent,
3 if the person is indigent.

4 OBJECTIONS TO INITIAL REVIEW. The bill permits the person
5 to object to the findings of the initial review. Under the
6 bill the person may object for the following reasons: the
7 person named in the petition is not the person in custody, the
8 person in custody is not the same person alleged to have
9 committed the sexually violent offenses, or no competent
10 evidence exists to show that sufficient facts exist to lead a
11 reasonable person to believe the person is a sexually violent
12 predator. The bill requires the court to issue its written
13 findings as to whether sufficient facts exist within 72 hours
14 of the hearing on the objections. If the court finds that
15 sufficient facts do not exist, the court shall immediately
16 notify the parties and permit the state 24 hours to amend the
17 petition and any supporting statement. If after a hearing on
18 the amended petition the court finds that sufficient facts
19 still do not exist, the petition shall be dismissed. The bill
20 permits the state to file an emergency appeal with the Iowa
21 supreme court as to whether sufficient facts exist to support
22 the amended petition. The bill provides that if an emergency
23 appeal is filed, the person shall remain confined pending the
24 decision of the Iowa supreme court.

25 TRIAL. The bill provides that a trial to determine whether
26 a person is a sexually violent predator shall be held within
27 90 days of the findings in the initial review. The bill
28 allows the person or the attorney for the person to waive the
29 90-day trial requirement, and to reassert the demand for a 90-
30 day trial if previously waived. The bill and current law
31 provide that the trial may be to the court or to a jury, and
32 either party or the court may demand a jury trial. The bill
33 provides that the Iowa rules of evidence and the Iowa rules of
34 civil procedure shall apply to the trial, unless otherwise
35 specified. The bill permits the introduction of previous

1 sexually violent offenses into evidence, and states that the
2 prior offenses are relevant and probative, whether criminal
3 charges were filed or not filed, notwithstanding any Iowa rule
4 of evidence to the contrary. The bill provides that the
5 evidence of prior sexually violent offenses may be introduced
6 in document form, including initial review transcripts, trial
7 transcripts, probation and sentencing reports, and evaluations
8 by mental health experts. The bill also permits the
9 introduction of testimonial evidence by the victim of a prior
10 sexually violent offense, whether criminal charges were filed
11 or not filed, and states that the prior facts and
12 circumstances are relevant and probative, notwithstanding any
13 Iowa rule of evidence to the contrary. The bill provides that
14 the testimonial evidence may be presented by telephone or
15 electronic means, by videotape, or by prior sworn testimony.
16 If the person is civilly committed, the person shall be under
17 the control, care, and treatment of the department of human
18 services until the person is discharged from the program.

19 ANNUAL REVIEW AND FINAL HEARING. The bill and current law
20 provide that a sexually violent predator is entitled to an
21 annual examination of the person's mental abnormality. The
22 bill provides that the court shall conduct an annual review,
23 and if warranted set a final hearing on the status of the
24 committed person.

25 Annual review. The bill provides that the Iowa rules of
26 evidence do not apply to an annual review and the sexually
27 violent predator is not entitled to be present at the annual
28 review; however, the person's attorney may be present. The
29 burden is on the sexually violent predator to show by a
30 preponderance of the evidence that there is competent evidence
31 to lead a reasonable person to believe a final hearing should
32 be held to determine that the mental abnormality of the
33 sexually violent predator has so changed that the person is
34 not likely to engage in predatory acts constituting sexually
35 violent offenses if discharged, or whether the sexually

1 violent predator is suitable for placement in a transitional
2 release program. If at the time of the annual review the
3 sexually violent predator has filed a petition for discharge
4 or placement in the transitional release program with the
5 permission of the director of human services, the court shall
6 not conduct an annual review but shall set a final hearing on
7 the petition. If at the time of the annual review the
8 sexually violent predator has filed a petition without
9 authorization from the director, the court shall first conduct
10 an annual review to determine if a final hearing is warranted.

11 Final hearing. The bill provides that the purpose of the
12 final hearing is to determine whether the mental abnormality
13 of the sexually violent predator has so changed that the
14 person is not likely to engage in predatory acts constituting
15 sexually violent offenses if discharged, or the sexually
16 violent predator is suitable for placement in a transitional
17 release program. The bill and current law provide that either
18 party or the court may request a jury to make the
19 determination. The bill provides that if the case is before a
20 jury, the verdict must be unanimous on the issue of whether to
21 discharge, or to place in a transitional release program.

22 TRANSITIONAL RELEASE. The bill establishes a transitional
23 release program which provides for the conditional release of
24 a sexually violent predator from a secure facility. The bill
25 permits the department of human services or the court to place
26 conditions on such a release. The bill provides that a
27 sexually violent predator is suitable for placement in a
28 transitional release program if all of the following apply:
29 the person is no longer classified as "high risk" to reoffend,
30 significant insights have been achieved in the sex offending
31 cycle, acceptance of responsibility for past behavior and an
32 understanding has been achieved about the impact sexually
33 violent crimes have on a victim, a relapse prevention program
34 has been developed, no major discipline reports have been
35 filed during the previous year, the person is not likely to

1 attempt to escape or leave the program, acts constituting a
2 sexually violent offense are not likely to occur, it is in the
3 best interest of the committed person, and a willingness to
4 abide by rules has been demonstrated.

5 Violations of transitional release. The bill provides that
6 the treatment staff of a transitional release program may
7 remove a sexually violent predator from the program and
8 transfer the person back to a secure facility for a violation
9 of the conditions of release. The bill provides that the
10 treatment staff may request an ex parte order directing a
11 local law enforcement agency to take the sexually violent
12 predator into custody so the person can be returned to a
13 secure facility. The bill provides that if a sexually violent
14 predator has absconded from the program, the department of
15 human services, in cooperation with a local law enforcement
16 agency, may make a public announcement about the sexually
17 violent predator. Upon the return of the sexually violent
18 predator to a secure facility, the court shall determine if a
19 violation of a condition of release occurred. If the court
20 determines a violation did occur, the court may order the
21 person to remain confined in a secure facility, or the court
22 may return the person to the transitional release program
23 subject to further terms and conditions.

24 SUPERVISED RELEASE. The bill and current law provide for
25 release with or without supervision. The bill provides that
26 the court may order release with or without supervision in
27 lieu of discharge if during the annual review or final hearing
28 one of the following occurs: the state and the sexually
29 violent offender stipulate to release with or without
30 supervision, or the court or jury has determined the person
31 should be discharged from the program but the court determines
32 it is in the best interest of the community that the person be
33 released with or without supervision. Within 30 days of
34 ordering release with or without supervision, the court shall
35 have a hearing regarding a release plan prepared by the

1 department of human services. The bill provides that if the
2 court orders release with supervision, the court shall order
3 supervision by an agency with jurisdiction that is familiar
4 with the placement of criminal offenders in the community. If
5 the person is released without supervision, the agency shall
6 be responsible for initiating proceedings against the sexually
7 violent predator if a violation of the release plan occurs.
8 The bill provides that a person released with or without
9 supervision is not considered discharged from the sexually
10 violent predator program. The bill provides that the sexually
11 violent predator may petition the court for discharge from the
12 program if released with or without supervision.

13 Violations of release with or without supervision. The
14 bill provides that if a violation of the release plan occurs,
15 the agency with jurisdiction may request the district court to
16 issue an emergency ex parte order directing a law enforcement
17 agency to take the sexually violent predator into custody so
18 the person can be returned to a secure facility. The bill
19 provides that if a sexually violent predator has absconded in
20 violation of the release plan, the department of human
21 services, in cooperation with a local law enforcement agency,
22 may make a public announcement about the sexually violent
23 predator. Upon the return of the sexually violent predator to
24 a secure facility, the court shall determine if a violation of
25 the release plan occurred. If the court determines a
26 violation did occur, the court may order the person remain
27 confined in a secure facility, or the court may place the
28 person in the transitional release program or return the
29 person to release with or without supervision subject to
30 further terms and conditions.

31 DUAL COMMITMENT. The bill provides for the dual commitment
32 of a sexually violent predator. The bill provides that civil
33 commitment proceedings may be initiated pursuant to Code
34 chapter 125, 229, or 812 at any time after a petition to
35 civilly commit a person as a sexually violent predator has

1 been filed. The bill provides that civil commitment for
2 sexually violent predators takes priority for the purpose of
3 treatment over other civil commitment. The bill provides that
4 the director of human services shall coordinate the payment of
5 costs under a dual commitment. The bill provides that if
6 services were provided to the person under Code chapter 125,
7 229, or 812, then those services shall be paid as provided in
8 that chapter.

9 TRANSPORT ORDERS. The bill provides that a transport order
10 may only be requested by the court, the state, or the sexually
11 violent predator's attorney. The bill provides that a
12 sexually violent predator may be transported to trial and any
13 other court proceedings if the court authorizes a transport
14 order, and the transportation shall be provided by the sheriff
15 in which the action is brought, or as otherwise agreed to by
16 the parties. The bill also provides that a transport order is
17 not necessary to transport a sexually violent predator to a
18 medical facility or to an evaluation, and that transportation
19 shall be provided by the county in which the person is
20 confined. The bill provides that transportation shall be
21 provided by the department of human services for placement in
22 a transitional release program or supervised release.

23 CRIMINAL OFFENSES COMMITTED WHILE DETAINED. The bill
24 provides that if a person being detained for commitment or who
25 has been civilly committed commits a crime, the civil
26 commitment proceedings or treatment process shall be suspended
27 until the criminal proceedings, including any term of
28 confinement, are completed. The bill provides that upon the
29 filing of a criminal complaint, indictment, or information the
30 person shall be transferred to the county jail in the county
31 where the crime occurred until the criminal proceedings have
32 been completed. The bill provides that if the person is
33 sentenced to a term of confinement in the county jail as a
34 result of the criminal offense, the person shall serve the
35 sentence in the county jail. If the person is sentenced to

1 prison, the person shall serve the sentence at a correctional
2 institution. The bill provides that the person shall not be
3 released from jail or paroled or released to a facility or
4 program located outside the jail or prison other than to a
5 secure facility operated by the department of human services
6 upon completion of the term of confinement.

7 DEPARTMENT OF CORRECTIONS. Upon placement in an
8 appropriate secure facility, the director of the department of
9 corrections has authority to determine in which appropriate
10 secure facility the safekeeper will be placed, and has
11 authority to determine the level of segregation the sex
12 offender will be subjected to while in the placement.

13 PROTECTIVE ORDER. The bill provides that a victim of a
14 person detained or committed pursuant to Code chapter 229A may
15 obtain a protective order against a safekeeper or person
16 committed using the same procedures as in Code section 915.22,
17 relating to civil injunctions to restrain harassment or
18 intimidation of victims or witnesses.

19 RULEMAKING AUTHORITY. The bill grants rulemaking authority
20 to the department of human services to administer the sexually
21 violent predator program.

22 STATE MANDATE. The bill may include a state mandate as
23 defined in Code section 25B.3. The bill makes inapplicable
24 Code section 25B.2, subsection 3, which would relieve a
25 political subdivision from complying with a state mandate if
26 funding for the cost of the state mandate is not provided or
27 specified. Therefore, political subdivisions are required to
28 comply with any state mandate included in the bill.

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FILED FEB 25 2002

SENATE FILE 2286
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3141)

Passed Senate, Date 3/7/02
(P.546)
Vote: Ayes 44 Nays 0

Passed House, Date 4-10-02
(P.1306)
Vote: Ayes 99 Nays 0

Approved April 30, 2002

(P.1148) *Re-passed 4-12-02*
vote 45-0

A BILL FOR

1 An Act relating to the civil commitment of sexually violent
2 predators.

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

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JSF 2286

TLSB 5189SV 79
jm/cls/14

1 Section 1. Section 229A.1, unnumbered paragraph 2, Code
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for
4 rehabilitating sexually violent predators in a prison setting
5 is poor, because the treatment needs of this population are
6 very long-term, and the treatment modalities for this
7 population are very different from the traditional treatment
8 modalities available in a prison setting or for persons
9 appropriate for commitment under chapter 229. Therefore, the
10 general assembly finds that a civil commitment procedure for
11 the long-term care and treatment of the sexually violent
12 predator is necessary. The procedures regarding sexually
violent predators should reflect legitimate public safety
concerns, while providing treatment services designed to
benefit sexually violent predators who are civilly committed.
16 The procedures should also reflect the need to protect the
17 public, to respect the needs of the victims of sexually
18 violent offenses, and to encourage full meaningful
19 participation of sexually violent predators in treatment
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional
24 discharge from the sexually violent predator program. A
25 person released from an appropriate secure facility in a
26 transitional release program or released with or without
27 supervision is not considered to be discharged.

28 NEW SUBSECTION. 6A. "Safekeeper" means a person who is
29 confined in an appropriate secure facility pursuant to this
30 chapter but who is not subject to an order of commitment
31 pursuant to this chapter.

32 NEW SUBSECTION. 10. "Transitional release" means a
33 conditional release from a secure facility operated by the
34 department of human services with the conditions of such
35 release set by the court or the department of human services.

1 Sec. 3. Section 229A.5B, Code Supplement 2001, is amended
2 to read as follows:

3 229A.5B ESCAPE FROM CUSTODY.

4 1. A respondent person who is in-custody detained pursuant
5 to section 229A.5 or is subject to an order of civil
6 commitment under this chapter shall remain in custody unless
7 released by court order or discharged under section 229A.8 or
8 229A.10. A person who has been placed in a transitional
9 release program or who is under release with or without
10 supervision is considered to be in custody. A respondent
11 person in custody under this chapter shall not do any of the
12 following:

13 a. Leave or attempt to leave a facility without the
14 accompaniment of authorized personnel or leave or attempt to
15 leave a facility without authorization.

16 b. Knowingly and voluntarily be absent from a place where
17 the respondent person is required to be present.

18 c. Leave or attempt to leave the custody of personnel
19 transporting or guarding the respondent person while the
20 respondent person is away from a facility.

21 2. A respondent person who violates subsection 1 commits a
22 simple misdemeanor or may be subject to punishment for
23 contempt. ~~If-the-respondent-pleads-guilty-to,-or-is-convicted~~
~~of,-an-offense-under-this-section,-or-is-found-in-contempt,-or~~
~~both,-and-is-sentenced-to-a-term-of-confinement,-the-civil~~
~~commitment-proceedings-or-treatment-process-may-be-stayed-by~~
~~court-order-until-the-term-of-confinement-is-served-by-the~~
28 respondent.

29 3. If a respondent person commits a violation of
30 subsection 1 and remains unconfined, the attorney general or
31 the chief law enforcement officer of the political subdivision
32 where the violation occurs may make a public announcement that
33 the respondent person is unconfined and may provide relevant
34 information about the respondent person to the community. The
35 attorney general may also notify a victim or the family of a

1 victim of the respondent person that the respondent person is
2 unconfined.

3 4. This section shall not be construed to prohibit the use
4 of the-interstate-compact-on-mental-health-as-provided-in
5 chapter-221 other lawful means for the return of the person.

6 Sec. 4. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED
7 WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

8 1. If a person who is detained pursuant to section 229A.5
9 or who is subject to an order of civil commitment under this
10 chapter commits a public offense, the civil commitment
11 proceedings or treatment process shall be suspended until the
12 criminal proceedings, including any term of confinement, are
13 completed. The person shall also not be eligible for bail
14 pursuant to section 811.1.

15 2. Upon the filing of a complaint, indictment, or
16 information, the person shall be transferred to the county
17 jail in the county where the public offense occurred until the
18 criminal proceedings have been completed. If the person is
19 sentenced to a term of confinement in a county jail, the
20 person shall serve the sentence at the county jail. If the
21 person is sentenced to the custody of the director of the
22 department of corrections, the person shall serve the sentence
23 at a correctional institution.

24 3. A person shall not be released from jail or paroled or
25 released to a facility or program located outside the county
26 jail or correctional institution other than to a secure
27 facility operated by the department of human services.

28 4. A person who committed a public offense while in a
29 transitional release program or on release with or without
30 supervision may be returned to a secure facility operated by
31 the department of human services upon completion of any term
32 of confinement that resulted from the commission of the public
33 offense.

34 5. If the civil commitment proceedings for a person are
35 suspended due to the commission of a public offense by the

1 person, the ninety-day trial demand lapses. Upon completion
2 of any term of confinement that resulted from the commission
3 of the public offense, a new ninety-day trial demand
4 automatically begins.

5 Sec. 5. NEW SECTION. 229A.5D MEDICAL TREATMENT.

6 A safekeeper is entitled to necessary medical treatment.

7 Sec. 6. NEW SECTION. 229A.6A TRANSPORT ORDERS.

8 1. A person who has been detained prior to trial pursuant
9 to section 229A.5 or who has been civilly committed may be
10 transported for the following purposes:

11 a. To trial and any other court proceedings if the court
12 has authorized a transport order. A transport order may only
13 be requested by the court, the person's attorney, or the
14 attorney general. Transportation shall be provided by the
15 sheriff of the county in which the action has been brought,
16 unless the court specifies otherwise or the parties agree to a
17 different transportation arrangement. If a transport order is
18 not authorized, the person may appear at any court proceedings
19 other than trial by telephone or electronic means.

20 b. To a medical facility for medical treatment, if
21 necessary medical treatment is not available at the facility
22 where the person is confined. A transport order is not
23 required to transport the person for medical treatment.

24 However, the person is not entitled to choose the medical
25 facility where treatment is to be obtained or the medical
26 personnel to provide the treatment. Transportation shall be
27 provided by the sheriff of the county in which the person is
28 confined.

29 c. To a medical, psychological, or psychiatric evaluation.
30 A person shall not be transported to another facility for
31 evaluation without a court order. When a transportation order
32 is requested under this paragraph, notice must be provided to
33 the opposing party, and the opposing party must be given a
34 reasonable amount of time to object to the issuance of such an
35 order. The cost of the transportation shall be paid by the

1 party who requests the order.

2 d. To a facility for placement in a transitional release
3 program or for release with or without supervision. A
4 transport order is not required under this paragraph.
5 Transportation shall be provided by the department of human
6 services.

7 2. This section shall not be construed to grant a person
8 the right to personally appear at all court proceedings under
9 this chapter.

10 Sec. 7. Section 229A.7, subsection 2, Code 2001, is
11 amended to read as follows:

12 2. Within ninety days after either the entry of the order
13 waiving the probable cause hearing or completion of the
14 probable cause hearing held under section 229A.5, the court
15 shall conduct a trial to determine whether the respondent is a
16 sexually violent predator. The respondent or the attorney for
17 the respondent may waive the ninety-day trial requirement as
18 provided in this section; however, the respondent or the
19 attorney for the respondent may reassert a demand and the
20 trial shall be held within ninety days from the date of filing
21 the demand with the clerk of court. The trial may be
22 continued upon the request of either party and a showing of
23 good cause, or by the court on its own motion in the due
24 administration of justice, and when the respondent will not be
25 substantially prejudiced. In determining what constitutes
26 good cause, the court shall consider the length of the
27 pretrial detention of the respondent.

28 2A. The respondent, the attorney general, or the judge
29 shall have the right to demand that the trial be before a
30 jury. Such demand for the trial to be before a jury shall be
31 filed, in writing, at least ten days prior to trial. The
32 number-and-selection-of-jurors-shall-be-determined-as-provided
33 in-chapter-607A- If no demand is made, the trial shall be
34 before the court. Except as otherwise provided, the Iowa
35 rules of evidence and the Iowa rules of civil procedure shall

1 apply to all civil commitment proceedings initiated pursuant
2 to this chapter.

3 Sec. 8. Section 229A.7, subsections 3, 4, and 5, Code
4 2001, are amended to read as follows:

5 3. At trial, the court or jury shall determine whether,
6 beyond a reasonable doubt, the respondent is a sexually
7 violent predator and there shall be no presumption to commit
or not to commit. If the determination-that-the-respondent-is
9 a-sexually-violent-predator-is-made-by-a-jury--the
10 determination case is before a jury, the verdict shall be by
11 unanimous verdict-of-such-jury that the respondent is a
12 sexually violent predator.

13 If the court or jury determines that the respondent is a
14 sexually violent predator, the respondent shall be committed
15 to the custody of the director of the department of human
16 services for control, care, and treatment until such time as
17 the person's mental abnormality has so changed that the person
18 is safe to be at-large placed in a transitional release
19 program or discharged. The determination may be appealed.

20 4. The control, care, and treatment of a person determined
21 to be a sexually violent predator shall be provided at a
22 facility operated by the department of human services. At all
23 times prior to placement in a transitional release program or
24 release with or without supervision, persons committed for
25 control, care, and treatment by the department of human
26 services pursuant to this chapter shall be kept in a secure
27 facility and those patients shall be segregated at all times
28 from any other patient under the supervision of the department
29 of human services. A person committed pursuant to this
30 chapter to the custody of the department of human services may
31 be kept in a facility or building separate from any other
32 patient under the supervision of the department of human
33 services. The department of human services may enter into a
34 chapter 28E agreement with the department of corrections or
35 other appropriate agency in this state or another state for

1 the confinement of patients who have been determined to be
2 sexually violent predators. Patients who are in the
3 confinement custody of the director of the department of
4 corrections pursuant to a chapter 28E agreement and who have
5 not been placed in a transitional release program or released
6 with or without supervision shall be housed and managed
7 separately from criminal offenders in the custody of the
8 director of the department of corrections, and except for
9 occasional instances of supervised incidental contact, shall
10 be segregated from those offenders.

11 5. If the court makes the determination or the jury is-not
12 satisfied-beyond-a-reasonable-doubt determines by a unanimous
13 verdict that the respondent is not a sexually violent
14 predator, the court shall direct the respondent's release.
15 Upon release, the respondent shall comply with any
16 requirements to register as a sex offender as provided in
17 chapter 692A. Upon a mistrial, the court shall direct that
18 the respondent be held at an appropriate secure facility until
19 another trial is conducted. Any subsequent trial following a
20 mistrial shall be held within ninety days of the previous
21 trial, unless such subsequent trial is continued or the ninety
22 days are waived as provided in subsection 2.

23 Sec. 9. Section 229A.8, Code 2001, is amended to read as
24 follows:

25 229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR
26 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

27 1. Upon civil commitment of a person pursuant to this
28 chapter, a rebuttable presumption exists that the commitment
29 should continue. The presumption may be rebutted when facts
30 exist to warrant a hearing to determine whether a committed
31 person no longer suffers from a mental abnormality which makes
32 the person likely to engage in predatory acts constituting
33 sexually violent offenses if discharged, or the committed
34 person is suitable for placement in a transitional release
35 program.

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

8 2- 3. The annual report shall be provided to the court
9 that committed the person under this chapter. The court shall
10 conduct an annual review and probable-cause, if warranted, set
11 a final hearing on the status of the committed person. The
12 annual review may be based only on written records.

13 3- 4. Nothing contained in this chapter shall prohibit the
14 person from otherwise petitioning the court for discharge or
15 placement in a transitional release program at the probable
16 cause-hearing annual review. The director of human services
17 shall provide the committed person with an annual written
18 notice of the person's right to petition the court for
19 discharge or placement in a transitional release program over
20 the director's objection. The notice shall contain a waiver
21 of rights. The director shall forward the notice and waiver
22 form to the court with the annual report.

23 4- 5. The following provisions apply to an annual review:

24 a. The committed person shall have a right to have an
25 attorney represent the person at-the-probable-cause-hearing
26 but the person is not entitled to be present at the hearing,
27 if a hearing is held. If-the-court-at-the-hearing-determines
28 that-probable-cause-exists-to-believe-that-the-person's

29 b. The Iowa rules of evidence do not apply.

30 c. The committed person may waive an annual review or may
31 stipulate that the commitment should continue for another
32 year.

33 d. The court shall review the annual report of the state
34 and the report of any qualified expert or professional person
35 retained by or appointed for the committed person and may

1 receive arguments from the attorney general and the attorney
2 for the committed person if either requests a hearing. The
3 request for a hearing must be in writing, within ten days of
4 the filing of the notice of annual review, or on motion by the
5 court. Such a hearing may be conducted in writing without any
6 attorneys present.

7 e. The burden is on the committed person to show by a
8 preponderance of the evidence that there is competent evidence
9 which would lead a reasonable person to believe a final
10 hearing should be held to determine either of the following:

11 (1) The mental abnormality of the committed person has so
12 changed that the person is safe-to-be-at-large-and-will not
13 likely to engage in predatory acts or constituting sexually
14 violent offenses if discharged; -then-the-court-shall-set-a
15 final-hearing-on-the-issue.

16 (2) The committed person is suitable for placement in a
17 transitional release program pursuant to section 229A.8A.

18 If the committed person shows by a preponderance of the
19 evidence that a final hearing should be held on either
20 determination under subparagraph (1) or (2), or both, the
21 court shall set a final hearing within sixty days of the
22 determination that a final hearing be held.

23 f. If at the time for the annual review the committed
24 person has filed a petition for discharge or placement in a
25 transitional release program with authorization from the
26 director of human services, the court shall set a final
27 hearing within ninety days of the authorization by the
28 director, and no annual review shall be held.

29 g. If the committed person has not filed a petition, or
30 has filed a petition for discharge or for placement in a
31 transitional release program without authorization from the
32 director of human services, the court shall first conduct the
33 annual review as provided in this subsection.

34 h. Any petition can summarily be dismissed by the court as
35 provided in section 229A.11.

1 i. If at the time of the annual review the committed
2 person is in a secure facility and not in the transitional
3 release program, the state shall have the right to demand that
4 both determinations in paragraph "e" be submitted to the court
5 or jury.

6 5- 6. At-the-final-hearing,-the The following provisions
7 shall apply to a final hearing:

8 a. The committed person shall be entitled to be-present an
9 attorney and is entitled to the benefit of all constitutional
10 protections that were afforded the person at the original
11 commitment proceeding. The attorney-general-shall-represent
12 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have
13 the-committed-person-evaluated-by-experts-chosen-by-the-state
14 committed person shall be entitled to a jury trial, if such a
15 demand is made in writing and filed with the clerk of court at
16 least ten days prior to the final hearing.

17 b. The committed person shall also have the right to have
18 experts evaluate the person on the person's behalf. The court
19 shall appoint an expert if the person is indigent and requests
20 an appointment.

21 c. The attorney general shall represent the state and
22 shall have a right to demand a jury trial. The jury demand
23 shall be filed, in writing, at least ten days prior to the
24 final hearing.

25 d. The burden of proof at the final hearing shall be upon
26 the state to prove beyond a reasonable doubt that-the either
27 of the following:

28 (1) The committed person's mental abnormality or
29 personality-disorder remains such that the person is-not-safe
30 to-be-at-large-and-if-discharged is likely to engage in acts
31 of-sexual-violence predatory acts that constitute sexually
32 violent offenses if discharged.

33 (2) The committed person is not suitable for placement in
34 a transitional release program pursuant to section 229A.8A.

35 e. If the case is submitted to a jury, the verdict of the

1 jury must be unanimous as to whether to discharge the person
2 or to place the person in a transitional program.

3 f. If a mistrial is declared, the confinement or placement
4 status of the committed person shall not change. After a
5 mistrial has been declared, a new trial must be held within
6 ninety days of the mistrial.

7 7. The state and the committed person may stipulate to a
8 transfer to a transitional release program if the court
9 approves the stipulation.

10 Sec. 10. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

11 1. The department of human services is authorized to
12 establish a transitional release program and provide control,
13 care, and treatment, and supervision of committed persons
14 placed in such a program.

15 2. A committed person is suitable for placement in the
16 transitional release program if all of the following apply:

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

19 b. The committed person has achieved and demonstrated
20 significant insights into the person's sex offending cycle.

21 c. The committed person has accepted responsibility for
22 past behavior and understands the impact sexually violent
23 crimes have upon a victim.

24 d. A detailed relapse prevention plan has been developed
25 and accepted which is appropriate for the committed person's
26 mental abnormality and sex offending history.

27 e. No major discipline reports have been issued for the
28 committed person for a period of one year.

29 f. The committed person is not likely to escape or attempt
30 to escape custody pursuant to section 229A.5B.

31 g. The committed person is not likely to commit acts
32 constituting sexually violent offenses while in the program.

33 h. The placement is in the best interest of the committed
34 person.

35 i. The committed person has demonstrated a willingness to

1 agree to and abide by all rules of the program.

2 3. If the committed person does not agree to the
3 conditions of release, the person is not eligible for the
4 transitional release program.

5 4. For purposes of registering as a sex offender under
6 chapter 692A, a person placed in the transitional release
7 program shall be classified a "high-risk" sex offender and
8 public notification shall be as provided in section 692A.13A,
9 subsection 2. A committed person who refuses to register as a
10 sex offender is not eligible for placement in a transitional
11 release program.

12 5. Committed persons in the transitional release program
13 are not necessarily required to be segregated from other
14 persons.

15 6. The department of human services shall be responsible
16 for establishing and implementing the rules and directives
17 regarding the location of the transitional release program,
18 staffing needs, restrictions on confinement and the movement
19 of committed persons, and for assessing the progress of
20 committed persons in the program. The court may also impose
21 conditions on a committed person placed in the program.

22 7. The department of human services may contract with
23 other government or private agencies, including the department
24 of corrections, to implement and administer the transitional
25 release program.

26 Sec. 11. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL
27 RELEASE.

28 1. The treatment staff in a transitional release program
29 may remove the committed person from the program for a
30 violation of any rule or directive, and return the person to a
31 secure facility. The treatment staff may request the district
32 court to issue an emergency ex parte order directing any law
33 enforcement officer to take the committed person into custody
34 so that the person can be returned to a secure facility. The
35 request for an ex parte order may be made orally or by

1 telephone, but the original written request or a facsimile
2 copy of the original request shall be filed with the clerk of
3 court no later than four-thirty p.m. on the next business day
4 the office of the clerk of court is open.

5 2. If a committed person absconds from a transitional
6 release program in violation of the rules or directives, a
7 presumption arises that the person poses a risk to public
8 safety. The department of human services, in cooperation with
9 local law enforcement agencies, may make a public announcement
10 about the absconder. The public announcement may include a
11 description of the committed person, that the person is in
12 transitional release from the sexually violent predator
13 program, and any other information important to public safety.

14 3. Upon the return of the committed person to a secure
15 facility, the director of human services or the director's
16 designee shall notify the court that issued the ex parte order
17 that the absconder has been returned to a secure facility, and
18 the court shall set a hearing within five days to determine if
19 a violation occurred. If a court order was not issued, the
20 director or the director's designee shall contact the nearest
21 district court with jurisdiction to set a hearing to determine
22 whether a violation of the rules or directives occurred. The
23 court shall schedule a hearing within five days of receiving
24 notice that the committed person has been returned from the
25 transitional release program to a secure facility.

26 4. At the hearing the burden shall be upon the attorney
27 general to show by a preponderance of the evidence that a
28 violation of the rules or directives occurred. The hearing
29 shall be to the court.

30 5. If the court determines a violation occurred, the court
31 shall either order the committed person to be returned to the
32 transitional release program or to be confined in a secure
33 facility. The court may impose further conditions upon the
34 committed person if returned to the transitional release
35 program. If the court determines no violation occurred, the

1 committed person shall be returned to the transitional release
2 program.

3 Sec. 12. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT
4 SUPERVISION.

5 1. In any proceeding under section 229A.8, the court may
6 order the committed person released with or without
7 supervision if any of the following apply:

8 a. The state stipulates to the release with or without
9 supervision.

10 b. The court or jury has determined that the person should
11 be discharged from the program, but the court has determined
12 it is in the best interest of the community to order release
13 with or without supervision before the committed person is
14 discharged.

15 2. If release with or without supervision is ordered, the
16 department of human services shall prepare within thirty days
17 of the order of the court a release plan addressing the
18 person's needs for counseling, medication, community support
19 services, residential services, vocational services, alcohol
20 or other drug abuse treatment, sex offender treatment, or any
21 other treatment or supervision necessary.

22 3. The court shall set a hearing on the release plan
23 prepared by the department of human services before the
24 committed person is released from a secure facility or a
25 transitional release program.

26 4. If the court orders release with supervision, the court
27 shall order supervision by an agency with jurisdiction that is
28 familiar with the placement of criminal offenders in the
29 community. The agency with jurisdiction shall be responsible
30 for initiating proceedings for violations of the release plan
31 as provided in section 229A.9B. If the court orders release
32 without supervision, the agency with jurisdiction shall also
33 be responsible for initiating proceedings for any violations
34 of the release plan as provided in section 229A.9B.

35 5. A committed person may not petition the court for

1 release with or without supervision.

2 6. A committed person released with or without supervision
3 is not considered discharged from civil commitment under this
4 chapter.

5 7. After being released with or without supervision, the
6 person may petition the court for discharge as provided in
7 section 229A.8.

8 Sec. 13. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH
9 OR WITHOUT SUPERVISION.

10 1. If a committed person violates the release plan, the
11 agency with jurisdiction over the person may request the
12 district court to issue an emergency ex parte order directing
13 any law enforcement officer to take the person into custody so
14 that the person can be returned to a secure facility. The
15 request for an ex parte order may be made orally or by
16 telephone, but the original written request or a facsimile
17 copy of the request shall be filed with the clerk of court no
18 later than four-thirty p.m. on the next business day the
19 office of the clerk of court is open.

20 2. If a committed person has absconded in violation of the
21 conditions of the person's release plan, a presumption arises
22 that the person poses a risk to public safety. The department
23 of human services, in cooperation with local law enforcement
24 agencies, may make a public announcement about the absconder.
25 The public announcement may include a description of the
26 committed person, that the committed person is on release with
27 or without supervision from the sexually violent predator
28 program, and any other information pertinent to public safety.

29 3. Upon the return of the committed person to a secure
30 facility, the director of human services or the director's
31 designee shall notify the court that issued the ex parte order
32 that the committed person has been returned to a secure
33 facility, and the court shall set hearing within five days to
34 determine if a violation occurred. If a court order was not
35 issued, the director or the director's designee shall contact

1 the nearest district court with jurisdiction to set a hearing
2 to determine whether a violation of the conditions of the
3 release plan occurred. The court shall schedule a hearing
4 within five days of receiving notice that the committed person
5 has been returned to a secure facility.

6 4. At the hearing the burden shall be upon the attorney
7 general to show by a preponderance of the evidence that a
8 violation of the release plan occurred.

9 5. If the court determines a violation occurred, the court
10 shall either order that the committed person be returned to
11 release with or without supervision or placed in a
12 transitional release program, or be confined in a secure
13 facility. The court may impose further conditions upon the
14 committed person if returned to release with or without
15 supervision or placed in the transitional release program. If
16 the court determines no violation occurred, the committed
17 person shall be returned to release with or without
18 supervision.

19 Sec. 14. Section 229A.10, Code 2001, is amended to read as
20 follows:

21 229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

22 1. If the director of human services determines that the
23 person's mental abnormality has so changed that the person is
24 not likely to commit predatory acts or sexually violent
25 offenses if discharged, the director shall authorize the
26 person to petition the court for discharge. The petition
27 shall be served upon the court and the attorney general. The
28 court, upon receipt of the petition for discharge, shall order
29 a hearing within thirty days. The attorney general shall
30 represent the state, and shall have the right to have the
31 petitioner examined by an expert or professional person of the
32 attorney general's choice. The hearing shall be before a jury
33 if demanded by either the petitioner or the attorney general.
34 The burden of proof shall be upon the attorney general to show
35 beyond a reasonable doubt that the petitioner's mental

1 abnormality or personality disorder remains such that the
2 petitioner is-not-safe-to-be-at-large-and-that-if-discharged
3 is likely to commit engage in predatory acts or-sexually
4 violent that constitute sexually violent offenses if
5 discharged.

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

20 Sec. 15. Section 229A.11, Code 2001, is amended to read as
21 follows:

22 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.
23 Nothing in this chapter shall prohibit a person from filing
24 a petition for discharge or placement in a transitional
25 release program, pursuant to this chapter. However, if a
26 person has previously filed a petition for discharge or for
27 placement in a transitional release program without the
28 authorization of the director of human services, and the court
29 determines either upon review of the petition or following a
30 hearing that the petition was frivolous or that the
31 petitioner's condition had not so changed that the person was
32 safe-to-be-at-large not likely to engage in predatory acts
33 constituting sexually violent offenses if discharged, or was
34 not suitable for placement in the transitional release
35 program, then the court shall summarily deny the subsequent

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

10 Sec. 16. Section 229A.12, Code 2001, is amended to read as
11 follows:

12 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR
13 COSTS -- REIMBURSEMENT.

14 The director of human services shall be responsible for all
15 costs relating to the evaluation, treatment, and services
16 provided to persons committed to the director's custody after
17 the court or jury determines that the respondent is a sexually
18 violent predator and pursuant to commitment under any
19 provision of this chapter. If placement in a transitional
20 release program or supervision is ordered pursuant-to-section
21 229A.10, the director shall also be responsible for all costs
22 related to the transitional release program or to the
23 supervision and treatment of any person. Reimbursement may be
24 obtained by the director from the patient and any person
25 legally liable or bound by contract for the support of the
26 patient for the cost of confinement, or of care and treatment
27 provided. As used in this section, "any person legally
28 liable" does not include a political subdivision.

29 Sec. 17. NEW SECTION. 229A.12A DIRECTOR OF THE
30 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

31 The director of the department of corrections shall have
32 authority, once a person is detained pursuant to section
33 229A.5, to make a determination as to the appropriate secure
34 facility in which the safekeeper is to be placed, taking into
35 consideration the safekeeper's medical needs and ability to

1 interact with offenders who have been committed to the custody
2 of the director of the department of corrections. The
3 director has authority to determine the safekeeper's degree of
4 segregation from offenders, including whether total
5 segregation is appropriate under the circumstances or whether
6 the safekeeper should be permitted to participate in normal
7 confinement activities in the presence of offenders.

8 Sec. 18. Section 229A.14, Code 2001, is amended to read as
9 follows:

10 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION
11 AND RECORDS.

12 Notwithstanding anything-in-chapter-22-to-the-contrary, any
13 provision in the Code regarding confidentiality to the
14 contrary, any relevant information and records which would
15 otherwise be confidential or privileged shall be released to
16 the agency with jurisdiction or the attorney general for the
17 purpose of meeting the notice requirement provided in section
18 229A.3 and determining whether a person is or continues to be
19 a sexually violent predator.

20 Sec. 19. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

21 A victim of a crime that was committed by a safekeeper or
22 by a person subjected to an order of civil commitment pursuant
23 to this chapter, may obtain a protective order against the
24 safekeeper or person using the procedures set out in section
25 915.22.

26 Sec. 20. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

27 The department of human services shall adopt rules pursuant
28 to chapter 17A necessary to administer this chapter.

29 Sec. 21. Section 811.1, subsections 1 and 2, Code 2001,
30 are amended to read as follows:

31 1. A defendant awaiting judgment of conviction and
32 sentencing following either a plea or verdict of guilty of a
33 class "A" felony, murder, any class "B" felony included in
34 section 462A.14 or 707.6A; felonious assault; felonious child
35 endangerment; sexual abuse in the second degree; sexual abuse

1 in the third degree; kidnapping; robbery in the first degree;
2 arson in the first degree; burglary in the first degree; any
3 felony included in section 124.401, subsection 1, paragraph
4 "a" or "b"; or a second or subsequent offense under section
5 124.401, subsection 1, paragraph "c"; or any felony punishable
6 under section 902.9, subsection 1; any public offense
7 committed while detained pursuant to section 229A.5; or any
8 public offense committed while subject to an order of
9 commitment pursuant to chapter 229A.

10 2. A defendant appealing a conviction of a class "A"
11 felony; murder; any class "B" or "C" felony included in
12 section 462A.14 or 707.6A; felonious assault; felonious child
13 endangerment; sexual abuse in the second degree; sexual abuse
14 in the third degree; kidnapping; robbery in the first degree;
15 arson in the first degree; burglary in the first degree; any
16 felony included in section 124.401, subsection 1, paragraph
17 "a" or "b"; or a second or subsequent conviction under section
18 124.401, subsection 1, paragraph "c"; or any felony punishable
19 under section 902.9, subsection 1; any public offense
20 committed while detained pursuant to section 229A.5; or any
21 public offense committed while subject to an order of
22 commitment pursuant to chapter 229A.

23 Sec. 22. IMPLEMENTATION OF ACT. Section 25B.2, subsection
24 3, shall not apply to this Act.

25 Sec. 23. DIRECTIVE TO CODE EDITOR. The Code editor is
26 directed to renumber sections in chapter 229A and correct
27 internal references as necessary in conjunction with the
28 enactment of this Act.

29 EXPLANATION

30 This bill makes numerous changes to the sexually violent
31 predator Act in Code chapter 229A.

32 DEFINITIONS. The bill defines "safekeeper" to mean a
33 person who is confined in an appropriate secure facility, but
34 who is not subject to an order of commitment. The bill
35 defines "discharge" to mean an unconditional discharge from

1 the sexually violent predator program. The bill creates a
2 transitional release program and defines "transitional
3 release" to mean a conditional release from a secure facility
4 with conditions of such a release set by the court or the
5 department of human services.

6 ANNUAL REVIEW AND FINAL HEARING. The bill and current law
7 provide that a sexually violent predator is entitled to an
8 annual examination of the person's mental abnormality. The
9 bill provides that the court shall conduct an annual review,
10 and if warranted set a final hearing on the status of the
11 committed person.

12 Annual review. The bill provides that the Iowa rules of
13 evidence do not apply to an annual review and the sexually
14 violent predator is not entitled to be present at the annual
15 review; however, the person's attorney may be present. The
16 burden is on the sexually violent predator to show by a
17 preponderance of the evidence that there is competent evidence
18 to lead a reasonable person to believe a final hearing should
19 be held to determine that the mental abnormality of the
20 sexually violent predator has so changed that the person is
21 not likely to engage in predatory acts constituting sexually
22 violent offenses if discharged, or whether the sexually
23 violent predator is suitable for placement in a transitional
24 release program. If at the time of the annual review the
25 sexually violent predator has filed a petition for discharge
26 or placement in the transitional release program with the
27 permission of the director of human services, the court shall
28 not conduct an annual review but shall set a final hearing on
29 the petition. If at the time of the annual review the
30 sexually violent predator has filed a petition without
31 authorization from the director, the court shall first conduct
32 an annual review to determine if a final hearing is warranted.

33 Final hearing. The bill provides that the purpose of the
34 final hearing is to determine whether the mental abnormality
35 of the sexually violent predator has so changed that the

1 person is not likely to engage in predatory acts constituting
2 sexually violent offenses if discharged, or the sexually
3 violent predator is suitable for placement in a transitional
4 release program. The bill and current law provide that either
5 party or the court may request a jury to make the
6 determination. The bill provides that if the case is before a
7 jury, the verdict must be unanimous on the issue of whether to
8 discharge, or to place in a transitional release program.

9 TRANSITIONAL RELEASE. The bill establishes a transitional
10 release program which provides for the conditional release of
11 a sexually violent predator. The bill permits the department
12 of human services or the court to place conditions on such a
13 release. The bill provides that a sexually violent predator
14 is suitable for placement in a transitional release program if
15 all of the following apply: the person is no longer
16 classified as "high risk" to reoffend, significant insights
17 have been achieved in the sex offending cycle, acceptance of
18 responsibility for past behavior and an understanding has been
19 achieved about the impact sexually violent crimes have on a
20 victim, a relapse prevention program has been developed, no
21 major discipline reports have been filed during the previous
22 year, the person is not likely to attempt to escape or leave
23 the program, acts constituting a sexually violent offense are
24 not likely to occur, it is in the best interest of the
25 committed person, and a willingness to abide by rules has been
26 demonstrated.

27 Violations of transitional release. The bill provides that
28 the treatment staff of a transitional release program may
29 remove a sexually violent predator from the program and
30 transfer the person back to a secure facility for a violation
31 of the conditions of release. The bill provides that the
32 treatment staff may request an ex parte order directing a
33 local law enforcement agency to take the sexually violent
34 predator into custody so the person can be returned to a
35 secure facility. The bill provides that if a sexually violent

1 predator has absconded from the program, the department of
2 human services, in cooperation with a local law enforcement
3 agency, may make a public announcement about the sexually
4 violent predator. Upon the return of the sexually violent
5 predator to a secure facility, the court shall determine if a
6 violation of a condition of release occurred. If the court
7 determines a violation did occur, the court may order the
8 person to remain confined in a secure facility, or the court
9 may return the person to the transitional release program
10 subject to further terms and conditions.

11 SUPERVISED RELEASE. The bill and current law provide for
12 release with or without supervision. The bill provides that
13 the court may order release with or without supervision in
14 lieu of discharge if during the annual review or final hearing
15 one of the following occurs: the state and the sexually
16 violent offender stipulate to release with or without
17 supervision, or the court or jury has determined the person
18 should be discharged from the program but the court determines
19 it is in the best interest of the community that the person be
20 released with or without supervision. Within 30 days of
21 ordering release with or without supervision, the court shall
22 have a hearing regarding a release plan prepared by the
23 department of human services. The bill provides that if the
24 court orders release with supervision, the court shall order
25 supervision by an agency with jurisdiction that is familiar
26 with the placement of criminal offenders in the community. If
27 the person is released without supervision, the agency shall
28 be responsible for initiating proceedings against the sexually
29 violent predator if a violation of the release plan occurs.
30 The bill provides that a person released with or without
31 supervision is not considered discharged from the sexually
32 violent predator program. The bill provides that the sexually
33 violent predator may petition the court for discharge from the
34 program if released with or without supervision.

35 Violations of release with or without supervision. The

1 bill provides that if a violation of the release plan occurs,
2 the agency with jurisdiction may request the district court to
3 issue an emergency ex parte order directing a law enforcement
4 agency to take the sexually violent predator into custody so
5 the person can be returned to a secure facility. The bill
6 provides that if a sexually violent predator has absconded in
7 violation of the release plan, the department of human
8 services, in cooperation with a local law enforcement agency,
9 may make a public announcement about the sexually violent
10 predator. Upon the return of the sexually violent predator to
11 a secure facility, the court shall determine if a violation of
12 the release plan occurred. If the court determines a
13 violation did occur, the court may order the person remain
14 confined in a secure facility, or the court may place the
15 person in the transitional release program or return the
16 person to release with or without supervision subject to
17 further terms and conditions.

18 TRANSPORT ORDERS. The bill provides that a transport order
19 may only be requested by the court, the state, or the sexually
20 violent predator's attorney. The bill provides that a
21 sexually violent predator may be transported to trial and any
22 other court proceedings if the court authorizes a transport
23 order, and the transportation shall be provided by the sheriff
24 in which the action is brought, or as otherwise agreed to by
25 the parties. The bill also provides that a transport order is
26 not necessary to transport a sexually violent predator to a
27 medical facility or to an evaluation, and that transportation
28 shall be provided by the county in which the person is
29 confined. The bill provides that transportation shall be
30 provided by the department of human services for placement in
31 a transitional release program or supervised release.

32 CRIMINAL OFFENSES COMMITTED WHILE DETAINED. The bill
33 provides that if a person being detained for commitment or who
34 has been civilly committed commits a crime, the civil
35 commitment proceedings or treatment process shall be suspended

1 until the criminal proceedings, including any term of
2 confinement, are completed. The bill provides that upon the
3 filing of a criminal complaint, indictment, or information the
4 person shall be transferred to the county jail in the county
5 where the crime occurred until the criminal proceedings have
6 been completed. The bill provides that if the person is
7 sentenced to a term of confinement in the county jail as a
8 result of the criminal offense, the person shall serve the
9 sentence in the county jail. If the person is sentenced to
10 prison, the person shall serve the sentence at a correctional
11 institution. The bill provides that the person shall not be
12 released from jail or paroled or released to a facility or
13 program located outside the jail or prison other than to a
14 secure facility operated by the department of human services
15 upon completion of the term of confinement.

16 DEPARTMENT OF CORRECTIONS. Upon placement in an
17 appropriate secure facility, the director of the department of
18 corrections has authority to determine in which appropriate
19 secure facility the safekeeper will be placed, and has
20 authority to determine the level of segregation the sex
21 offender will be subjected to while in the placement.

22 PROTECTIVE ORDER. The bill provides that a victim of a
23 person detained or committed pursuant to Code chapter 229A may
24 obtain a protective order against a safekeeper or person
25 committed using the same procedures as in Code section 915.22,
26 relating to civil injunctions to restrain harassment or
27 intimidation of victims or witnesses.

28 RULEMAKING AUTHORITY. The bill grants rulemaking authority
29 to the department of human services to administer the sexually
30 violent predator program.

31 STATE MANDATE. The bill may include a state mandate as
32 defined in Code section 25B.3. The bill makes inapplicable
33 Code section 25B.2, subsection 3, which would relieve a
34 political subdivision from complying with a state mandate if
35 funding for the cost of the state mandate is not provided or

1 specified. Therefore, political subdivisions are required to
2 comply with any state mandate included in the bill.

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LSB 5189SV 79

SENATE FILE 2286**S-5086**

1 Amend Senate File 2286 as follows:

2 1. Page 1, line 25, by striking the words "an
3 appropriate" and inserting the following: "a".

4 2. Page 1, line 25, by striking the word "in" and
5 inserting the following: "into".

6 3. Page 3, line 24, by inserting after the word
7 "person" the following: "who is detained pursuant to
8 section 229A.5 or who is subject to an order of civil
9 commitment under this chapter".

10 4. Page 4, line 26, by inserting after the word
11 "Transportation" the following: "of a committed
12 person".

13 5. Page 4, line 28, by inserting after the word
14 "confined" the following: "if requested by the
15 department of human services".

16 6. Page 5, line 2, by inserting after the word
17 "placement" the following: "or treatment".

18 7. Page 5, by striking lines 5 and 6.

19 8. Page 11, line 16, by inserting after the word
20 "if" the following: "the court finds that".

21 9. Page 11, line 25, by inserting after the word
22 "accepted" the following: "by the treatment
23 provider".

24 10. Page 11, line 28, by striking the words "one
25 year" and inserting the following: "six months".

26 11. Page 14, line 8, by striking the word "state"
27 and inserting the following: "attorney general".

28 12. Page 15, by inserting after line 7 the
29 following:

30 "8. The court shall retain jurisdiction over the
31 committed person who has been released with or without
32 supervision until the person is discharged from the
33 program. The department of human services shall not
34 be held liable for any acts committed by a committed
35 person who has been ordered released with or without
36 supervision."

37 13. Page 15, line 23, by inserting after the word
38 "services" the following: "or contracting agency".

39 14. Page 16, line 10, by inserting after the word
40 "shall" the following: "receive release
41 recommendations from the department of human services
42 and".

43 15. Page 18, line 16, by striking the word
44 "persons" and inserting the following: "persons a
person that are incurred after the person is".

45 16. Page 18, line 34, by inserting after the word
46 "facility" the following: "within the department of
47 corrections".

48 17. Page 19, line 21, by inserting after the word
49 "committed" the following: "before the filing of a

S-5086

Page 2

1 petition under this chapter".
2 18. Page 20 by inserting after line 28 the
3 following:

4 "Sec. _____. EFFECTIVE DATE. This Act, being deemed
5 of immediate importance, takes effect upon enactment."
6 19. Title page, line 2, by inserting after the
7 word "predators" the following: ", and providing an
8 effective date".

9 20. By renumbering as necessary.

By JEFF ANGELO

S-5086 FILED FEBRUARY 28, 2002

Adopted 3/4/02 (P.476)

SENATE FILE 2286**S-5087**

1 Amend Senate File 2286 as follows:
2 1. Page 20, by inserting after line 22 the
3 following:

4 "Sec. _____. Section 901A.1, Code Supplement 2001,
5 is amended by adding the following new subsection:
6 NEW SUBSECTION. 3. As used in this chapter, the
7 term "sexually violent offense" means the same as
8 defined in section 229A.2.

9 Sec. _____. Section 901A.2, Code 2001, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 5A. A person who has been placed
12 in a transitional release program, released with or
13 without supervision, or discharged pursuant to chapter
14 229A, and who is subsequently convicted of a sexually
15 predatory offense or a sexually violent offense, shall
16 be sentenced to life in prison on the same terms as a
17 class "A" felon under section 902.1, notwithstanding
18 any other provision of the Code to the contrary. The
19 terms and conditions applicable to sentences for class
20 "A" felons under chapters 901 through 909 shall apply
21 to persons sentenced under this subsection."

By JEFF ANGELO

Adopted 3/4/02 (P.477) #2 Motion to Rk - Prevailed
S-5087 FILED FEBRUARY 28, 2002 S-5087 adopted 3/7/02

SENATE FILE 2286

S-5128

1 Amend the amendment, S-5087, to Senate File 2286 as
2 follows:
3 1. Page 1, by striking lines 4 through 8.
4 2. Page 1, lines 14 and 15, by striking the words
5 "a sexually predatory offense or a sexually violent
6 offense" and inserting the following: "any felony
7 offense under chapter 709".

W/D 3/7/02

By ROBERT E. DVORSKY

S-5128 FILED MARCH 6, 2002

SENATE FILE 2286

S-5136

1 Amend Senate amendment, S-5087, to Senate File 2286
2 as follows:
3 1. Page 1, line 21, by inserting after the word
4 "subsection." the following: "However, if the person
5 commits a sexually violent offense which is a
6 misdemeanor offense under chapter 709, the person
7 shall be sentenced to life in prison, with eligibility
8 for parole as provided in chapter 906."

By ROBERT E. DVORSKY

S-5136 FILED MARCH 7, 2002

ADOPTED

(P.545)

Legislative Fiscal Bureau

Fiscal Note

SF 2286 as amended by S - 5087 - Sexually Violent Predators Commitment (LSB 5189 SV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version – Senate File 2286 as amended by S - 5087

Requested by Senator Steven Hansen

Description

Senate File 2286 as amended by S - 5087 amends Chapter 229A, Code of Iowa. The Bill provides definitions, clarifies existing law for annual review and final hearings for civilly committed sexually violent predators, and establishes a transitional release program administered by the Department of Human Services (DHS). The Bill permits the DHS to contract with other government or private agencies, including the DOC, to implement and administer the transitional release program. Senate File 2286 clarifies existing law in relation to supervised release and provides for transport orders. The Bill provides procedures to be followed in an event that the sexually violent predator commits a criminal offense. A person who has been civilly committed under Chapter 229A, Code of Iowa, and received treatment, and is subsequently convicted of a sexually predatory or sexually violent offense is sentenced to life in prison.

Assumptions

1. There are currently 10 safekeepers and 27 civilly committed sexually violent predators housed at the Iowa Medical Classification Center at Oakdale.
2. The Civil Commitment Unit of the Office of the State Public Defender provides defense attorneys for the majority of these commitment cases.
3. The Bill simplifies the initial probable cause hearing, and streamlines the annual review process. The Office of the Attorney General received \$300,000 as an appropriation from the General Fund for FY 2001 for commitment proceedings of sexually violent predators. However, the Office spent approximately \$448,000.
4. The DHS will incur additional costs associated with establishing and administering the transitional release program.
5. The marginal cost per day for State prisons is \$16 per inmate.
6. The average daily cost for intensive supervision by Community-Based Corrections is \$9.49. The average cost per day for electronic monitoring is \$6.32. Combining these two supervision strategies results in an average daily cost of \$15.81 per day.
7. There is no impact on the Judicial Branch.

Correctional Impact

There is no correctional impact for the life sentence imposed by SF 2286 as amended by S - 5087. There are few people who are currently civilly committed. It is unlikely that a significant number of them will transition into the community over the next five years.

Fiscal Impact

The DHS has requested \$118,400 and 1.0 FTE position for a community residential placement program in FY 2003. This figure includes \$56,600 for one Social Worker 4, \$64,600 for contractual services such as treatment and supervision, and \$200 for travel.

The changes relating to the probable cause hearing and annual review process may result in cost containment of \$32,000 for the Office of the Attorney General.

There is no fiscal impact on the Office of the State Public Defender.

The fiscal impact on the DOC is not anticipated to be significant.

The fiscal impact on counties for operating jails is not anticipated to be significant.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division

Department of Corrections

Office of the State Public Defender

Office of the Attorney General

Office of the State Court Administrator

/s/ Dennis C Prouty

March 5, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

H-3/11/02 Judiciary
H-3/15/02 Do Pass

SENATE FILE 2286

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3141)

(AS AMENDED AND PASSED BY THE SENATE MARCH 7, 2002)

— New Language by the Senate

* — Language Stricken by the Senate

Passed Senate, Date 4-12-02 Passed House, Date 4-10-02
(P. 1148) (P. 1306)

Vote: Ayes 45 Nays 0 Vote: Ayes 99 Nays 0

Approved April 30, 2002

A BILL FOR

1 An Act relating to the civil commitment of sexually violent
2 predators, and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2286

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1 Section 1. Section 229A.1, unnumbered paragraph 2, Code
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for
4 rehabilitating sexually violent predators in a prison setting
5 is poor, because the treatment needs of this population are
6 very long-term, and the treatment modalities for this
7 population are very different from the traditional treatment
8 modalities available in a prison setting or for persons
9 appropriate for commitment under chapter 229. Therefore, the
10 general assembly finds that a civil commitment procedure for
11 the long-term care and treatment of the sexually violent
12 predator is necessary. The procedures regarding sexually
13 violent predators should reflect legitimate public safety
14 concerns, while providing treatment services designed to
15 benefit sexually violent predators who are civilly committed.
16 The procedures should also reflect the need to protect the
17 public, to respect the needs of the victims of sexually
18 violent offenses, and to encourage full meaningful
19 participation of sexually violent predators in treatment
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional
24 discharge from the sexually violent predator program. A
25 person released from a secure facility into a transitional
26 release program or released with or without supervision is not
27 considered to be discharged.

28 NEW SUBSECTION. 6A. "Safekeeper" means a person who is
29 confined in an appropriate secure facility pursuant to this
30 chapter but who is not subject to an order of commitment
31 pursuant to this chapter.

32 NEW SUBSECTION. 10. "Transitional release" means a
33 conditional release from a secure facility operated by the
34 department of human services with the conditions of such
35 release set by the court or the department of human services.

1 Sec. 3. Section 229A.5B, Code Supplement 2001, is amended
2 to read as follows:

3 229A.5B ESCAPE FROM CUSTODY.

4 1. A respondent person who is in-custody detained pursuant
5 to section 229A.5 or is subject to an order of civil
6 commitment under this chapter shall remain in custody unless
7 released by court order or discharged under section 229A.8 or
8 229A.10. A person who has been placed in a transitional
9 release program or who is under release with or without
10 supervision is considered to be in custody. A respondent
11 person in custody under this chapter shall not do any of the
12 following:

13 a. Leave or attempt to leave a facility without the
14 accompaniment of authorized personnel or leave or attempt to
15 leave a facility without authorization.

16 b. Knowingly and voluntarily be absent from a place where
17 the respondent person is required to be present.

18 c. Leave or attempt to leave the custody of personnel
19 transporting or guarding the respondent person while the
20 respondent person is away from a facility.

21 2. A respondent person who violates subsection 1 commits a
22 simple misdemeanor or may be subject to punishment for
23 contempt. If-the-respondent-pleads-guilty-to,-or-is-convicted
24 of,-an-offense-under-this-section,-or-is-found-in-contempt,-or
25 both,-and-is-sentenced-to-a-term-of-confinement,-the-civil
26 commitment-proceedings-or-treatment-process-may-be-stayed-by
27 court-order-until-the-term-of-confinement-is-served-by-the
28 respondent-

29 3. If a respondent person commits a violation of
30 subsection 1 and remains unconfined, the attorney general or
31 the chief law enforcement officer of the political subdivision
32 where the violation occurs may make a public announcement that
33 the respondent person is unconfined and may provide relevant
34 information about the respondent person to the community. The
35 attorney general may also notify a victim or the family of a

1 victim of the respondent person that the respondent person is
2 unconfined.

3 4. This section shall not be construed to prohibit the use
4 of ~~the-interstate-compact-on-mental-health-as-provided-in~~
5 ~~chapter-223~~ other lawful means for the return of the person.

6 Sec. 4. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED
7 WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

8 1. If a person who is detained pursuant to section 229A.5
9 or who is subject to an order of civil commitment under this
10 chapter commits a public offense, the civil commitment
11 proceedings or treatment process shall be suspended until the
12 criminal proceedings, including any term of confinement, are
13 completed. The person shall also not be eligible for bail
14 pursuant to section 811.1.

15 2. Upon the filing of a complaint, indictment, or
16 information, the person shall be transferred to the county
17 jail in the county where the public offense occurred until the
18 criminal proceedings have been completed. If the person is
19 sentenced to a term of confinement in a county jail, the
20 person shall serve the sentence at the county jail. If the
21 person is sentenced to the custody of the director of the
22 department of corrections, the person shall serve the sentence
23 at a correctional institution.

24 3. A person who is detained pursuant to section 229A.5 or
25 who is subject to an order of civil commitment under this
26 chapter shall not be released from jail or paroled or released
27 to a facility or program located outside the county jail or
28 correctional institution other than to a secure facility
29 operated by the department of human services.

30 4. A person who committed a public offense while in a
31 transitional release program or on release with or without
32 supervision may be returned to a secure facility operated by
33 the department of human services upon completion of any term
34 of confinement that resulted from the commission of the public
35 offense.

1 5. If the civil commitment proceedings for a person are
2 suspended due to the commission of a public offense by the
3 person, the ninety-day trial demand lapses. Upon completion
4 of any term of confinement that resulted from the commission
5 of the public offense, a new ninety-day trial demand
6 automatically begins.

7 Sec. 5. NEW SECTION. 229A.5D MEDICAL TREATMENT.

8 A safekeeper is entitled to necessary medical treatment.

9 Sec. 6. NEW SECTION. 229A.6A TRANSPORT ORDERS.

10 1. A person who has been detained prior to trial pursuant
11 to section 229A.5 or who has been civilly committed may be
12 transported for the following purposes:

13 a. To trial and any other court proceedings if the court
14 has authorized a transport order. A transport order may only
15 be requested by the court, the person's attorney, or the
16 attorney general. Transportation shall be provided by the
17 sheriff of the county in which the action has been brought,
18 unless the court specifies otherwise or the parties agree to a
19 different transportation arrangement. If a transport order is
20 not authorized, the person may appear at any court proceedings
21 other than trial by telephone or electronic means.

22 b. To a medical facility for medical treatment, if
23 necessary medical treatment is not available at the facility
24 where the person is confined. A transport order is not
25 required to transport the person for medical treatment.

26 However, the person is not entitled to choose the medical
27 facility where treatment is to be obtained or the medical
28 personnel to provide the treatment. Transportation of a
29 committed person shall be provided by the sheriff of the
30 county in which the person is confined if requested by the
31 department of human services.

32 c. To a medical, psychological, or psychiatric evaluation.
33 A person shall not be transported to another facility for
34 evaluation without a court order. When a transportation order
35 is requested under this paragraph, notice must be provided to

1 the opposing party, and the opposing party must be given a
2 reasonable amount of time to object to the issuance of such an
3 order. The cost of the transportation shall be paid by the
4 party who requests the order.

5 d. To a facility for placement or treatment in a
6 transitional release program or for release with or without
7 supervision. A transport order is not required under this
8 paragraph.

* 9 2. This section shall not be construed to grant a person
10 the right to personally appear at all court proceedings under
11 this chapter.

12 Sec. 7. Section 229A.7, subsection 2, Code 2001, is
13 amended to read as follows:

14 2. Within ninety days after either the entry of the order
15 waiving the probable cause hearing or completion of the
16 probable cause hearing held under section 229A.5, the court
17 shall conduct a trial to determine whether the respondent is a
18 sexually violent predator. The respondent or the attorney for
the respondent may waive the ninety-day trial requirement as
provided in this section; however, the respondent or the
attorney for the respondent may reassert a demand and the
trial shall be held within ninety days from the date of filing
the demand with the clerk of court. The trial may be
24 continued upon the request of either party and a showing of
25 good cause, or by the court on its own motion in the due
26 administration of justice, and when the respondent will not be
27 substantially prejudiced. In determining what constitutes
good cause, the court shall consider the length of the
pretrial detention of the respondent.

30 2A. The respondent, the attorney general, or the judge
31 shall have the right to demand that the trial be before a
32 jury. Such demand for the trial to be before a jury shall be
33 filed, in writing, at least ten days prior to trial. The
number-and-selection-of-jurors-shall-be-determined-as-provided
in-chapter-607A- If no demand is made, the trial shall be

1 before the court. Except as otherwise provided, the Iowa
2 rules of evidence and the Iowa rules of civil procedure shall
3 apply to all civil commitment proceedings initiated pursuant
4 to this chapter.

5 Sec. 8. Section 229A.7, subsections 3, 4, and 5, Code
6 2001, are amended to read as follows:

7 3. At trial, the court or jury shall determine whether,
8 beyond a reasonable doubt, the respondent is a sexually
9 violent predator and there shall be no presumption to commit
10 or not to commit. If the determination-that-the-respondent-is
11 a-sexually-violent-predator-is-made-by-a-jury,-the
12 determination case is before a jury, the verdict shall be by
13 unanimous verdict-of-such-jury that the respondent is a
14 sexually violent predator.

15 If the court or jury determines that the respondent is a
16 sexually violent predator, the respondent shall be committed
17 to the custody of the director of the department of human
18 services for control, care, and treatment until such time as
19 the person's mental abnormality has so changed that the person
20 is safe to be at-large placed in a transitional release
21 program or discharged. The determination may be appealed.

22 4. The control, care, and treatment of a person determined
23 to be a sexually violent predator shall be provided at a
24 facility operated by the department of human services. At all
25 times prior to placement in a transitional release program or
26 release with or without supervision, persons committed for
27 control, care, and treatment by the department of human
28 services pursuant to this chapter shall be kept in a secure
29 facility and those patients shall be segregated at all times
30 from any other patient under the supervision of the department
31 of human services. A person committed pursuant to this
32 chapter to the custody of the department of human services may
33 be kept in a facility or building separate from any other
34 patient under the supervision of the department of human
35 services. The department of human services may enter into a

1 chapter 28E agreement with the department of corrections or
2 other appropriate agency in this state or another state for
3 the confinement of patients who have been determined to be
4 sexually violent predators. Patients who are in the
5 confinement custody of the director of the department of
6 corrections pursuant to a chapter 28E agreement and who have
7 not been placed in a transitional release program or released
8 with or without supervision shall be housed and managed
9 separately from criminal offenders in the custody of the
10 director of the department of corrections, and except for
11 occasional instances of supervised incidental contact, shall
12 be segregated from those offenders.

13 5. If the court makes the determination or the jury is-not
14 satisfied-beyond-a-reasonable-doubt determines by a unanimous
15 verdict that the respondent is not a sexually violent
16 predator, the court shall direct the respondent's release.
17 Upon release, the respondent shall comply with any
18 requirements to register as a sex offender as provided in
19 chapter 692A. Upon a mistrial, the court shall direct that
20 the respondent be held at an appropriate secure facility until
21 another trial is conducted. Any subsequent trial following a
22 mistrial shall be held within ninety days of the previous
23 trial, unless such subsequent trial is continued or the ninety
24 days are waived as provided in subsection 2.

25 Sec. 9. Section 229A.8, Code 2001, is amended to read as
26 follows:

27 229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR
28 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

29 1. Upon civil commitment of a person pursuant to this
30 chapter, a rebuttable presumption exists that the commitment
31 should continue. The presumption may be rebutted when facts
32 exist to warrant a hearing to determine whether a committed
33 person no longer suffers from a mental abnormality which makes
34 the person likely to engage in predatory acts constituting
35 sexually violent offenses if discharged, or the committed

1 person is suitable for placement in a transitional release
2 program.

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

10 2- 3. The annual report shall be provided to the court
11 that committed the person under this chapter. The court shall
12 conduct an annual review and probable-cause, if warranted, set
13 a final hearing on the status of the committed person. The
14 annual review may be based only on written records.

15 3- 4. Nothing contained in this chapter shall prohibit the
16 person from otherwise petitioning the court for discharge or
placement in a transitional release program at the probable
cause-hearing annual review. The director of human services
19 shall provide the committed person with an annual written
20 notice of the person's right to petition the court for
21 discharge or placement in a transitional release program over
22 the director's objection. The notice shall contain a waiver
23 of rights. The director shall forward the notice and waiver
24 form to the court with the annual report.

25 4- 5. The following provisions apply to an annual review:

26 a. The committed person shall have a right to have an
27 attorney represent the person at-the-probable-cause-hearing
28 but the person is not entitled to be present at the hearing,
29 if a hearing is held. If-the-court-at-the-hearing-determines
30 that-probable-cause-exists-to-believe-that-the-person's

31 b. The Iowa rules of evidence do not apply.

32 c. The committed person may waive an annual review or may
33 stipulate that the commitment should continue for another
34 year.

35 d. The court shall review the annual report of the state

1 and the report of any qualified expert or professional person
2 retained by or appointed for the committed person and may
3 receive arguments from the attorney general and the attorney
4 for the committed person if either requests a hearing. The
5 request for a hearing must be in writing, within ten days of
6 the filing of the notice of annual review, or on motion by the
7 court. Such a hearing may be conducted in writing without any
8 attorneys present.

9 e. The burden is on the committed person to show by a
10 preponderance of the evidence that there is competent evidence
11 which would lead a reasonable person to believe a final
12 hearing should be held to determine either of the following:

13 (1) The mental abnormality of the committed person has so
14 changed that the person is safe-to-be-at-large-and-will not
15 likely to engage in predatory acts or constituting sexually
16 violent offenses if discharged, -then-the-court-shall-set-a
17 final-hearing-on-the-issue.

18 (2) The committed person is suitable for placement in a
19 transitional release program pursuant to section 229A.8A.

20 If the committed person shows by a preponderance of the
21 evidence that a final hearing should be held on either
22 determination under subparagraph (1) or (2), or both, the
23 court shall set a final hearing within sixty days of the
24 determination that a final hearing be held.

25 f. If at the time for the annual review the committed
26 person has filed a petition for discharge or placement in a
27 transitional release program with authorization from the
28 director of human services, the court shall set a final
29 hearing within ninety days of the authorization by the
30 director, and no annual review shall be held.

31 g. If the committed person has not filed a petition, or
32 has filed a petition for discharge or for placement in a
33 transitional release program without authorization from the
34 director of human services, the court shall first conduct the
35 annual review as provided in this subsection.

1 h. Any petition can summarily be dismissed by the court as
2 provided in section 229A.11.

3 i. If at the time of the annual review the committed
4 person is in a secure facility and not in the transitional
5 release program, the state shall have the right to demand that
6 both determinations in paragraph "e" be submitted to the court
7 or jury.

8 5- 6. At-the-final-hearing,-the The following provisions
9 shall apply to a final hearing:

10 a. The committed person shall be entitled to be-present an
11 attorney and is entitled to the benefit of all constitutional
12 protections that were afforded the person at the original
13 commitment proceeding. The attorney-general-shall-represent
14 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have
15 the-committed-person-evaluated-by-experts-chosen-by-the-state
16 committed person shall be entitled to a jury trial, if such a
17 demand is made in writing and filed with the clerk of court at
18 least ten days prior to the final hearing.

19 b. The committed person shall also have the right to have
20 experts evaluate the person on the person's behalf. The court
21 shall appoint an expert if the person is indigent and requests
22 an appointment.

23 c. The attorney general shall represent the state and
24 shall have a right to demand a jury trial. The jury demand
25 shall be filed, in writing, at least ten days prior to the
26 final hearing.

27 d. The burden of proof at the final hearing shall be upon
28 the state to prove beyond a reasonable doubt that-the either
29 of the following:

30 (1) The committed person's mental abnormality or
31 personality-disorder remains such that the person is-not-safe
32 to-be-at-large-and-if-discharged is likely to engage in acts
33 of-sexual-violence predatory acts that constitute sexually
34 violent offenses if discharged.

35 (2) The committed person is not suitable for placement in

1 a transitional release program pursuant to section 229A.8A.
2 e. If the case is submitted to a jury, the verdict of the
3 jury must be unanimous as to whether to discharge the person
4 or to place the person in a transitional program.

5 f. If a mistrial is declared, the confinement or placement
6 status of the committed person shall not change. After a
7 mistrial has been declared, a new trial must be held within
8 ninety days of the mistrial.

9 7. The state and the committed person may stipulate to a
10 transfer to a transitional release program if the court
11 approves the stipulation.

12 Sec. 10. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

13 1. The department of human services is authorized to
14 establish a transitional release program and provide control,
15 care, and treatment, and supervision of committed persons
16 placed in such a program.

17 2. A committed person is suitable for placement in the
18 transitional release program if the court finds that all of
19 the following apply:

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

22 b. The committed person has achieved and demonstrated
23 significant insights into the person's sex offending cycle.

24 c. The committed person has accepted responsibility for
25 past behavior and understands the impact sexually violent
26 crimes have upon a victim.

27 d. A detailed relapse prevention plan has been developed
28 and accepted by the treatment provider which is appropriate
29 for the committed person's mental abnormality and sex
30 offending history.

31 e. No major discipline reports have been issued for the
32 committed person for a period of six months.

33 f. The committed person is not likely to escape or attempt
34 to escape custody pursuant to section 229A.5B.

35 g. The committed person is not likely to commit acts

1 constituting sexually violent offenses while in the program.

2 h. The placement is in the best interest of the committed
3 person.

4 i. The committed person has demonstrated a willingness to
5 agree to and abide by all rules of the program.

6 3. If the committed person does not agree to the
7 conditions of release, the person is not eligible for the
8 transitional release program.

9 4. For purposes of registering as a sex offender under
10 chapter 692A, a person placed in the transitional release
11 program shall be classified a "high-risk" sex offender and
12 public notification shall be as provided in section 692A.13A,
13 subsection 2. A committed person who refuses to register as a
14 sex offender is not eligible for placement in a transitional
15 release program.

16 5. Committed persons in the transitional release program
17 are not necessarily required to be segregated from other
18 persons.

19 6. The department of human services shall be responsible
20 for establishing and implementing the rules and directives
21 regarding the location of the transitional release program,
22 staffing needs, restrictions on confinement and the movement
23 of committed persons, and for assessing the progress of
24 committed persons in the program. The court may also impose
25 conditions on a committed person placed in the program.

26 7. The department of human services may contract with
27 other government or private agencies, including the department
28 of corrections, to implement and administer the transitional
29 release program.

30 Sec. 11. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL
31 RELEASE.

32 1. The treatment staff in a transitional release program
33 may remove the committed person from the program for a
34 violation of any rule or directive, and return the person to a
35 secure facility. The treatment staff may request the district

1 court to issue an emergency ex parte order directing any law
2 enforcement officer to take the committed person into custody
3 so that the person can be returned to a secure facility. The
4 request for an ex parte order may be made orally or by
5 telephone, but the original written request or a facsimile
6 copy of the original request shall be filed with the clerk of
7 court no later than four-thirty p.m. on the next business day
8 the office of the clerk of court is open.

9 2. If a committed person absconds from a transitional
10 release program in violation of the rules or directives, a
11 presumption arises that the person poses a risk to public
12 safety. The department of human services, in cooperation with
13 local law enforcement agencies, may make a public announcement
14 about the absconder. The public announcement may include a
15 description of the committed person, that the person is in
16 transitional release from the sexually violent predator
17 program, and any other information important to public safety.

18 3. Upon the return of the committed person to a secure
19 facility, the director of human services or the director's
20 designee shall notify the court that issued the ex parte order
21 that the absconder has been returned to a secure facility, and
22 the court shall set a hearing within five days to determine if
23 a violation occurred. If a court order was not issued, the
24 director or the director's designee shall contact the nearest
25 district court with jurisdiction to set a hearing to determine
26 whether a violation of the rules or directives occurred. The
27 court shall schedule a hearing within five days of receiving
28 notice that the committed person has been returned from the
29 transitional release program to a secure facility.

30 4. At the hearing the burden shall be upon the attorney
31 general to show by a preponderance of the evidence that a
32 violation of the rules or directives occurred. The hearing
33 shall be to the court.

34 5. If the court determines a violation occurred, the court
35 shall either order the committed person to be returned to the

1 transitional release program or to be confined in a secure
2 facility. The court may impose further conditions upon the
3 committed person if returned to the transitional release
4 program. If the court determines no violation occurred, the
5 committed person shall be returned to the transitional release
6 program.

7 Sec. 12. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT
8 SUPERVISION.

9 1. In any proceeding under section 229A.8, the court may
10 order the committed person released with or without
11 supervision if any of the following apply:

12 a. The attorney general stipulates to the release with or
13 without supervision.

14 b. The court or jury has determined that the person should
15 be discharged from the program, but the court has determined
16 it is in the best interest of the community to order release
17 with or without supervision before the committed person is
18 discharged.

19 2. If release with or without supervision is ordered, the
20 department of human services shall prepare within thirty days
21 of the order of the court a release plan addressing the
22 person's needs for counseling, medication, community support
23 services, residential services, vocational services, alcohol
24 or other drug abuse treatment, sex offender treatment, or any
25 other treatment or supervision necessary.

26 3. The court shall set a hearing on the release plan
27 prepared by the department of human services before the
28 committed person is released from a secure facility or a
29 transitional release program.

30 4. If the court orders release with supervision, the court
31 shall order supervision by an agency with jurisdiction that is
32 familiar with the placement of criminal offenders in the
33 community. The agency with jurisdiction shall be responsible
34 for initiating proceedings for violations of the release plan
35 as provided in section 229A.9B. If the court orders release

1 without supervision, the agency with jurisdiction shall also
2 be responsible for initiating proceedings for any violations
3 of the release plan as provided in section 229A.9B.

4 5. A committed person may not petition the court for
5 release with or without supervision.

6 6. A committed person released with or without supervision
7 is not considered discharged from civil commitment under this
8 chapter.

9 7. After being released with or without supervision, the
10 person may petition the court for discharge as provided in
11 section 229A.8.

12 8. The court shall retain jurisdiction over the committed
13 person who has been released with or without supervision until
14 the person is discharged from the program. The department of
15 human services shall not be held liable for any acts committed
16 by a committed person who has been ordered released with or
17 without supervision.

18 Sec. 13. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH
19 OR WITHOUT SUPERVISION.

20 1. If a committed person violates the release plan, the
21 agency with jurisdiction over the person may request the
22 district court to issue an emergency ex parte order directing
23 any law enforcement officer to take the person into custody so
24 that the person can be returned to a secure facility. The
25 request for an ex parte order may be made orally or by
26 telephone, but the original written request or a facsimile
27 copy of the request shall be filed with the clerk of court no
28 later than four-thirty p.m. on the next business day the
29 office of the clerk of court is open.

30 2. If a committed person has absconded in violation of the
31 conditions of the person's release plan, a presumption arises
32 that the person poses a risk to public safety. The department
33 of human services or contracting agency, in cooperation with
34 local law enforcement agencies, may make a public announcement
35 about the absconder. The public announcement may include a

1 description of the committed person, that the committed person
2 is on release with or without supervision from the sexually
3 violent predator program, and any other information pertinent
4 to public safety.

5 3. Upon the return of the committed person to a secure
6 facility, the director of human services or the director's
7 designee shall notify the court that issued the ex parte order
8 that the committed person has been returned to a secure
9 facility, and the court shall set hearing within five days to
10 determine if a violation occurred. If a court order was not
11 issued, the director or the director's designee shall contact
12 the nearest district court with jurisdiction to set a hearing
13 to determine whether a violation of the conditions of the
14 release plan occurred. The court shall schedule a hearing
15 within five days of receiving notice that the committed person
16 has been returned to a secure facility.

17 4. At the hearing the burden shall be upon the attorney
18 general to show by a preponderance of the evidence that a
19 violation of the release plan occurred.

20 5. If the court determines a violation occurred, the court
21 shall receive release recommendations from the department of
22 human services and either order that the committed person be
23 returned to release with or without supervision or placed in a
24 transitional release program, or be confined in a secure
25 facility. The court may impose further conditions upon the
26 committed person if returned to release with or without
27 supervision or placed in the transitional release program. If
28 the court determines no violation occurred, the committed
29 person shall be returned to release with or without
30 supervision.

31 Sec. 14. Section 229A.10, Code 2001, is amended to read as
32 follows:

33 229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

34 1. If the director of human services determines that the
35 person's mental abnormality has so changed that the person is

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

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

32 Sec. 15. Section 229A.11, Code 2001, is amended to read as
33 follows:

34 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.
35 Nothing in this chapter shall prohibit a person from filing

1 a petition for discharge or placement in a transitional
2 release program, pursuant to this chapter. However, if a
3 person has previously filed a petition for discharge or for
4 placement in a transitional release program without the
5 authorization of the director of human services, and the court
6 determines either upon review of the petition or following a
7 hearing that the petition was frivolous or that the
8 petitioner's condition had not so changed that the person was
9 safe-to-be-at-large not likely to engage in predatory acts
10 constituting sexually violent offenses if discharged, or was
11 not suitable for placement in the transitional release
12 program, then the court shall summarily deny the subsequent
13 petition unless the petition contains facts upon which a court
14 could find the condition of the petitioner had so changed that
15 a hearing was warranted. Upon receipt of a first or
16 subsequent petition from a committed person without the
17 director's authorization, the court shall endeavor whenever
18 possible to review the petition and determine if the petition
19 is based upon frivolous grounds. If the court determines that
20 a petition is frivolous, the court shall deny dismiss the
21 petition without a hearing.

22 Sec. 16. Section 229A.12, Code 2001, is amended to read as
23 follows:

24 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR
25 COSTS -- REIMBURSEMENT.

26 The director of human services shall be responsible for all
27 costs relating to the evaluation, treatment, and services
28 provided to persons a person that are incurred after the
29 person is committed to the director's custody after the court
30 or jury determines that the respondent is a sexually violent
31 predator and pursuant to commitment under any provision of
32 this chapter. If placement in a transitional release program
33 or supervision is ordered pursuant-to-section-229A-10, the
34 director shall also be responsible for all costs related to
35 the transitional release program or to the supervision and

1 treatment of any person. Reimbursement may be obtained by the
2 director from the patient and any person legally liable or
3 bound by contract for the support of the patient for the cost
4 of confinement, or of care and treatment provided. As used in
5 this section, "any person legally liable" does not include a
6 political subdivision.

7 Sec. 17. NEW SECTION. 229A.12A DIRECTOR OF THE
8 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

9 The director of the department of corrections shall have
10 authority, once a person is detained pursuant to section
11 229A.5, to make a determination as to the appropriate secure
12 facility within the department of corrections in which the
13 safekeeper is to be placed, taking into consideration the
14 safekeeper's medical needs and ability to interact with
15 offenders who have been committed to the custody of the
16 director of the department of corrections. The director has
17 authority to determine the safekeeper's degree of segregation
18 from offenders, including whether total segregation is
19 appropriate under the circumstances or whether the safekeeper
20 should be permitted to participate in normal confinement
21 activities in the presence of offenders.

22 Sec. 18. Section 229A.14, Code 2001, is amended to read as
23 follows:

24 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION
25 AND RECORDS.

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

34 Sec. 19. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

35 A victim of a crime that was committed before the filing of

1 a petition under this chapter by a safekeeper or by a person
2 subjected to an order of civil commitment pursuant to this
3 chapter, may obtain a protective order against the safekeeper
4 or person using the procedures set out in section 915.22.

5 Sec. 20. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

6 The department of human services shall adopt rules pursuant
7 to chapter 17A necessary to administer this chapter.

8 Sec. 21. Section 811.1, subsections 1 and 2, Code 2001,
9 are amended to read as follows:

10 1. A defendant awaiting judgment of conviction and
11 sentencing following either a plea or verdict of guilty of a
12 class "A" felony, murder, any class "B" felony included in
13 section 462A.14 or 707.6A; felonious assault; felonious child
14 endangerment; sexual abuse in the second degree; sexual abuse
15 in the third degree; kidnapping; robbery in the first degree;
16 arson in the first degree; burglary in the first degree; any
17 felony included in section 124.401, subsection 1, paragraph
18 "a" or "b"; or a second or subsequent offense under section
19 124.401, subsection 1, paragraph "c"; or any felony punishable
20 under section 902.9, subsection 1; any public offense
21 committed while detained pursuant to section 229A.5; or any
22 public offense committed while subject to an order of
23 commitment pursuant to chapter 229A.

24 2. A defendant appealing a conviction of a class "A"
25 felony; murder; any class "B" or "C" felony included in
26 section 462A.14 or 707.6A; felonious assault; felonious child
27 endangerment; sexual abuse in the second degree; sexual abuse
28 in the third degree; kidnapping; robbery in the first degree;
29 arson in the first degree; burglary in the first degree; any
30 felony included in section 124.401, subsection 1, paragraph
31 "a" or "b"; or a second or subsequent conviction under section
32 124.401, subsection 1, paragraph "c"; or any felony punishable
33 under section 902.9, subsection 1; any public offense
34 committed while detained pursuant to section 229A.5; or any
35 public offense committed while subject to an order of

1 commitment pursuant to chapter 229A.

2 Sec. 22. Section 901A.1, Code Supplement 2001, is amended
3 by adding the following new subsection:

4 NEW SUBSECTION. 3. As used in this chapter, the term
5 "sexually violent offense" means the same as defined in
6 section 229A.2.

7 Sec. 23. Section 901A.2, Code 2001, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 5A. A person who has been placed in a
10 transitional release program, released with or without
11 supervision, or discharged pursuant to chapter 229A, and who
12 is subsequently convicted of a sexually predatory offense or a
13 sexually violent offense, shall be sentenced to life in prison
14 on the same terms as a class "A" felon under section 902.1,
15 notwithstanding any other provision of the Code to the
16 contrary. The terms and conditions applicable to sentences
17 for class "A" felons under chapters 901 through 909 shall
18 apply to persons sentenced under this subsection. However, if
19 the person commits a sexually violent offense which is a
20 misdemeanor offense under chapter 709, the person shall be
21 sentenced to life in prison, with eligibility for parole as
22 provided in chapter 906.

23 Sec. 24. IMPLEMENTATION OF ACT. Section 25B.2, subsection
24 3, shall not apply to this Act.

25 Sec. 25. DIRECTIVE TO CODE EDITOR. The Code editor is
26 directed to renumber sections in chapter 229A and correct
27 internal references as necessary in conjunction with the
28 enactment of this Act.

29 Sec. 26. EFFECTIVE DATE. This Act, being deemed of
30 immediate importance, takes effect upon enactment.

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Legislative Fiscal Bureau

Fiscal Note

SF 2286 - Sexually Violent Predators Commitment (LSB 5189 SV.1)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version – As Passed by the Senate

Requested by Representative Charles Larson, Jr.

Description

Senate File 2286 as passed by the Senate amends Chapter 229A, Code of Iowa. The Bill provides definitions, clarifies existing law for annual review and final hearings for civilly committed sexually violent predators, and establishes a transitional release program administered by the Department of Human Services (DHS). The Bill permits the DHS to contract with other government or private agencies, including the Department of Corrections (DOC), to implement and administer the transitional release program. Senate File 2286 as passed by the Senate clarifies existing law in relation to supervised release and provides for transport orders. The Bill provides procedures to be followed in an event that the sexually violent predator commits a criminal offense. A person who has been civilly committed under Chapter 229A, Code of Iowa, and received treatment, and is subsequently convicted of a sexually predatory or sexually violent offense is sentenced to life in prison. However, if the offense for which the offender was convicted is a misdemeanor offense, the offender is eligible for parole from the life sentence.

Assumptions

1. There are currently 10 safekeepers and 27 civilly committed sexually violent predators housed at the Iowa Medical Classification Center at Oakdale.
2. The Civil Commitment Unit of the Office of the State Public Defender provides defense attorneys for the majority of these commitment cases.
3. The Bill simplifies the initial probable cause hearing, and streamlines the annual review process. The Office of the Attorney General received \$300,000 as an appropriation from the General Fund for FY 2001 for commitment proceedings of sexually violent predators. However, the Office spent approximately \$448,000.
4. The DHS will incur additional costs associated with establishing and administering the transitional release program.
5. The marginal cost per day for State prisons is \$16 per inmate.
6. The average daily cost for intensive supervision by Community-Based Corrections is \$9.49. The average cost per day for electronic monitoring is \$6.32. Combining these two supervision strategies results in an average daily cost of \$15.81 per day.
7. There is no impact on the Judicial Branch.

Correctional Impact

There is no correctional impact for the life sentence imposed by SF 2286 as passed by the Senate. There are few people who are currently civilly committed. It is unlikely that a significant number of them will transition into the community over the next five years.

Fiscal Impact

The DHS has requested \$118,400 and 1.0 FTE position for a community residential placement program in FY 2003. This figure includes \$56,600 for one Social Worker 4, \$64,600 for contractual services such as treatment and supervision, and \$200 for travel.

The changes relating to the probable cause hearing and annual review process may result in cost containment of \$32,000 for the Office of the Attorney General.

There is no fiscal impact to the Office of the State Public Defender.

The fiscal impact to the DOC is not anticipated to be significant.

The fiscal impact to counties for operating jails is not anticipated to be significant.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division

Department of Corrections

Office of the State Public Defender

Office of the Attorney General

Office of the State Court Administrator

/s/ Dennis C Prouty

March 11, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

APRIL 4, 2002

Page 25

SENATE FILE 2286**H-8502**

1 Amend Senate File 2286, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "Sec. _____. Section 229A.5, subsection 3, Code
6 2001, is amended to read as follows:
7 3. At the hearing, the rules of evidence do not
8 apply, and the state may rely solely upon the petition
9 filed under subsection 1, but the state may also
10 supplement the petition with additional documentary
11 evidence or live testimony."

12 2. Page 3, lines 24 and 25, by striking the words
13 and figure "who is detained pursuant to section 229A.5
14 or".

15 3. Page 6, lines 9 and 10, by striking the words
16 "and there shall be no presumption to commit or not to
17 commit".

18 4. Page 7, lines 14 and 15, by striking the words
19 "by a unanimous verdict".

20 5. Page 8, by striking lines 21 and 22, and
21 inserting the following: "discharge over the
director's objection or placement in a transitional
release program without authorization from the
24 director. The notice shall contain a waiver".

25 6. Page 9, lines 5 and 6, by striking the words
26 "ten days of the filing of the notice of annual
27 review" and inserting the following: "thirty days of
28 the notice of annual review being provided to counsel
29 for the committed person".

30 7. Page 11, by inserting after line 1 the
31 following:

32 "_____. If the director of human services has
33 authorized the committed person to petition for
34 discharge or for placement in a transitional release
35 program and the case is before a jury, testimony by a
36 victim of a prior sexually violent offense committed
37 by the person is not admissible. If the director has
38 not authorized the petition or the case is before the
39 court, testimony by a victim of a sexually violent
40 offense committed by the person may be admitted."

41 8. Page 11, by striking lines 2 through 4.

42 9. Page 17, line 11, by striking the words "The
43 burden" and inserting the following: "The If the
44 attorney general objects to the petition for
45 discharge, the burden".

46 10. Page 19, line 29, by inserting after the word
47 "privileged" the following: ", except information
48 subject to attorney-client privilege and attorney work
49 product,".

50 11. By renumbering as necessary.

By SHEY of Linn

KREIMAN of Davis

EICHHORN of Hamilton

H-8502 FILED APRIL 3, 2002

adopted

4-10-02

(P. 1306)

SENATE FILE 2286

H-8549

1 Amend the amendment, H-8502, to Senate File 2286,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 37, by inserting after the word
5 "admissible" the following: "if the court finds that
6 the probative value of the testimony is substantially
7 outweighed by the danger of unfair prejudice,
8 confusion of the issues, or misleading the jury, or by
9 considerations of undue delay, waste of time, or
10 needless presentation".

By HATCH of Polk

H-8549 FILED APRIL 9, 2002

w10 4-10-02

**HOUSE AMENDMENT TO
SENATE FILE 2286**

S-5460

- 1 Amend Senate File 2286, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, by inserting before line 1 the
4 following:
5 "Sec. _____. Section 229A.5, subsection 3, Code
6 2001, is amended to read as follows:
7 3. At the hearing, the rules of evidence do not
8 apply, and the state may rely solely upon the petition
9 filed under subsection 1, but the state may also
10 supplement the petition with additional documentary
11 evidence or live testimony."
12 2. Page 3, line 24, by striking the words and
13 figure "who is detained pursuant to section 229A.5
14 or".
15 3. Page 6, lines 9 and 10, by striking the words
16 "and there shall be no presumption to commit or not to
17 commit".
18 4. Page 7, lines 14 and 15, by striking the words
19 "by a unanimous verdict".
20 5. Page 8, by striking lines 21 and 22, and
21 inserting the following: "discharge ~~over the~~
22 ~~director's objection or placement in a transitional~~
23 ~~release program without authorization from the~~
24 director. The notice shall contain a waiver".
25 6. Page 9, lines 5 and 6, by striking the words
26 "ten days of the filing of the notice of annual
27 review" and inserting the following: "thirty days of
28 the notice of annual review being provided to counsel
29 for the committed person".
30 7. Page 11, by inserting after line 1 the
31 following:
32 "If the director of human services has
33 authorized the committed person to petition for
34 discharge or for placement in a transitional release
35 program and the case is before a jury, testimony by a
36 victim of a prior sexually violent offense committed
37 by the person is not admissible. If the director has
38 not authorized the petition or the case is before the
39 court, testimony by a victim of a sexually violent
40 offense committed by the person may be admitted."
41 8. Page 11, by striking lines 2 through 4.
42 9. Page 17, line 11, by striking the words "The
43 burden" and inserting the following: "The If the
44 attorney general objects to the petition for
45 discharge, the burden".
46 10. Page 19, line 29, by inserting after the word
47 "privileged" the following: ", except information
48 subject to attorney-client privilege and attorney work
49 product, ".
50 11. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5460 FILED APRIL 10, 2002

Senate Concurred 4/12/02 (P.1148)

SENATE FILE 2286

S-5492

1 Amend the House amendment, S-5460, to Senate File
2 2286, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, line 37, by inserting after the word
5 "admissible" the following: "if the court finds that
6 the probative value of the testimony is substantially
7 outweighed by the danger of unfair prejudice,
8 confusion of the issues, or misleading the jury, or by
9 considerations of undue delay, waste of time, or
10 needless presentation".

By THOMAS FIEGEN
JOHNIE HAMMOND

S-5492 FILED APRIL 11, 2002

W/D
4/12/02 (P. 1148)

SENATE FILE 2286

AN ACT

RELATING TO THE CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 229A.1, unnumbered paragraph 2, Code 2001, is amended to read as follows:

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full meaningful participation of sexually violent predators in treatment programs.

Sec. 2. Section 229A.2, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. "Discharge" means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

NEW SUBSECTION. 6A. "Safekeeper" means a person who is confined in an appropriate secure facility pursuant to this

chapter but who is not subject to an order of commitment pursuant to this chapter.

NEW SUBSECTION. 10. "Transitional release" means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

Sec. 3. Section 229A.5, subsection 3, Code 2001, is amended to read as follows:

3. At the hearing, the rules of evidence do not apply, and the state may rely solely upon the petition filed under subsection 1, but the state may also supplement the petition with additional documentary evidence or live testimony.

Sec. 4. Section 229A.5B, Code Supplement 2001, is amended to read as follows:

229A.5B ESCAPE FROM CUSTODY.

1. A respondent person who is in-custody detained pursuant to section 229A.5 or is subject to an order of civil commitment under this chapter shall remain in custody unless released by court order or discharged under section 229A.8 or 229A.10. A person who has been placed in a transitional release program or who is under release with or without supervision is considered to be in custody. A respondent person in custody under this chapter shall not do any of the following:

a. Leave or attempt to leave a facility without the accompaniment of authorized personnel or leave or attempt to leave a facility without authorization.

b. Knowingly and voluntarily be absent from a place where the respondent person is required to be present.

c. Leave or attempt to leave the custody of personnel transporting or guarding the respondent person while the respondent person is away from a facility.

2. A respondent person who violates subsection 1 commits a simple misdemeanor or may be subject to punishment for contempt. ~~If-the-respondent-pleads-guilty-to,-or-is-convicted-of,-an-offense-under-this-section,-or-is-found-in-contempt,-or-both,-and-is-sentenced-to-a-term-of-confinement,-the-civil~~

~~commitment-proceedings-or-treatment-process-may-be-stayed-by court-order-until-the-term-of-confinement-is-served-by-the respondent.~~

3. If a respondent person commits a violation of subsection 1 and remains unconfined, the attorney general or the chief law enforcement officer of the political subdivision where the violation occurs may make a public announcement that the respondent person is unconfined and may provide relevant information about the respondent person to the community. The attorney general may also notify a victim or the family of a victim of the respondent person that the respondent person is unconfined.

4. This section shall not be construed to prohibit the use of ~~the-interstate-compact-on-mental-health-as-provided-in chapter-223~~ other lawful means for the return of the person.

Sec. 5. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

1. If a person who is detained pursuant to section 229A.5 or who is subject to an order of civil commitment under this chapter commits a public offense, the civil commitment proceedings or treatment process shall be suspended until the criminal proceedings, including any term of confinement, are completed. The person shall also not be eligible for bail pursuant to section 811.1.

2. Upon the filing of a complaint, indictment, or information, the person shall be transferred to the county jail in the county where the public offense occurred until the criminal proceedings have been completed. If the person is sentenced to a term of confinement in a county jail, the person shall serve the sentence at the county jail. If the person is sentenced to the custody of the director of the department of corrections, the person shall serve the sentence at a correctional institution.

3. A person who is subject to an order of civil commitment under this chapter shall not be released from jail or paroled or released to a facility or program located outside the county jail or correctional institution other than to a secure facility operated by the department of human services.

4. A person who committed a public offense while in a transitional release program or on release with or without supervision may be returned to a secure facility operated by the department of human services upon completion of any term of confinement that resulted from the commission of the public offense.

5. If the civil commitment proceedings for a person are suspended due to the commission of a public offense by the person, the ninety-day trial demand lapses. Upon completion of any term of confinement that resulted from the commission of the public offense, a new ninety-day trial demand automatically begins.

Sec. 6. NEW SECTION. 229A.5D MEDICAL TREATMENT.

A safekeeper is entitled to necessary medical treatment.

Sec. 7. NEW SECTION. 229A.6A TRANSPORT ORDERS.

1. A person who has been detained prior to trial pursuant to section 229A.5 or who has been civilly committed may be transported for the following purposes:

a. To trial and any other court proceedings if the court has authorized a transport order. A transport order may only be requested by the court, the person's attorney, or the attorney general. Transportation shall be provided by the sheriff of the county in which the action has been brought, unless the court specifies otherwise or the parties agree to a different transportation arrangement. If a transport order is not authorized, the person may appear at any court proceedings other than trial by telephone or electronic means.

b. To a medical facility for medical treatment, if necessary medical treatment is not available at the facility where the person is confined. A transport order is not required to transport the person for medical treatment. However, the person is not entitled to choose the medical facility where treatment is to be obtained or the medical personnel to provide the treatment. Transportation of a committed person shall be provided by the sheriff of the county in which the person is confined if requested by the department of human services.

c. To a medical, psychological, or psychiatric evaluation. A person shall not be transported to another facility for evaluation without a court order. When a transportation order is requested under this paragraph, notice must be provided to the opposing party, and the opposing party must be given a reasonable amount of time to object to the issuance of such an order. The cost of the transportation shall be paid by the party who requests the order.

d. To a facility for placement or treatment in a transitional release program or for release with or without supervision. A transport order is not required under this paragraph.

2. This section shall not be construed to grant a person the right to personally appear at all court proceedings under this chapter.

Sec. 8. Section 229A.7, subsection 2, Code 2001, is amended to read as follows:

2. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

2A. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. The

number-and-selection-of-jurors-shall-be-determined-as-provided-in-chapter-607A. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

Sec. 9. Section 229A.7, subsections 3, 4, and 5, Code 2001, are amended to read as follows:

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

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

4. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or

other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the confinement custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

5. If the court makes the determination or the jury is-not satisfied-beyond-a-reasonable-doubt determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 2.

Sec. 10. Section 229A.8, Code 2001, is amended to read as follows:

229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

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

2. 3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and probable-cause, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

3. 4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the probable cause-hearing annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge over-the-director's-objection or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

4. 5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person at-the-probable-cause-hearing but the person is not entitled to be present at the hearing, if a hearing is held. If-the-court-at-the-hearing-determines that-probable-cause-exists-to-believe-that-the-person's

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney

for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. The burden is on the committed person to show by a preponderance of the evidence that there is competent evidence which would lead a reasonable person to believe a final hearing should be held to determine either of the following:

(1) The mental abnormality of the committed person has so changed that the person is safe-to-be-at-large-and-will not likely to engage in predatory acts or constituting sexually violent offenses if discharged; then-the-court-shall-set-a final-hearing-on-the-issue.

(2) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1) or (2), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional

release program, the state shall have the right to demand that both determinations in paragraph "e" be submitted to the court or jury.

5. 6. At-the-final-hearing,-the The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to be-present an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The attorney-general-shall-represent the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have the-committed-person-evaluated-by-experts-chosen-by-the-state committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall also have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt that-the either of the following:

(1) The committed person's mental abnormality or personality-disorder remains such that the person is-not-safe to-be-at-large-and-if-discharged is likely to engage in acts of-sexual-violence predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director

has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

Sec. 11. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

1. The department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.

2. A committed person is suitable for placement in the transitional release program if the court finds that all of the following apply:

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

b. The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

c. The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

d. A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history.

e. No major discipline reports have been issued for the committed person for a period of six months.

f. The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

g. The committed person is not likely to commit acts constituting sexually violent offenses while in the program.

h. The placement is in the best interest of the committed person.

i. The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

3. If the committed person does not agree to the conditions of release, the person is not eligible for the transitional release program.

4. For purposes of registering as a sex offender under chapter 692A, a person placed in the transitional release program shall be classified a "high-risk" sex offender and public notification shall be as provided in section 692A.13A, subsection 2. A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

5. Committed persons in the transitional release program are not necessarily required to be segregated from other persons.

6. The department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on confinement and the movement of committed persons, and for assessing the progress of committed persons in the program. The court may also impose conditions on a committed person placed in the program.

7. The department of human services may contract with other government or private agencies, including the department of corrections, to implement and administer the transitional release program.

Sec. 12. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL RELEASE.

1. The treatment staff in a transitional release program may remove the committed person from the program for a violation of any rule or directive, and return the person to a secure facility. The treatment staff may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the committed person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile

copy of the original request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person absconds from a transitional release program in violation of the rules or directives, a presumption arises that the person poses a risk to public safety. The department of human services, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the person is in transitional release from the sexually violent predator program, and any other information important to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the absconder has been returned to a secure facility, and the court shall set a hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the rules or directives occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned from the transitional release program to a secure facility.

4. At the hearing the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the rules or directives occurred. The hearing shall be to the court.

5. If the court determines a violation occurred, the court shall either order the committed person to be returned to the transitional release program or to be confined in a secure facility. The court may impose further conditions upon the committed person if returned to the transitional release program. If the court determines no violation occurred, the committed person shall be returned to the transitional release program.

Sec. 13. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT SUPERVISION.

1. In any proceeding under section 229A.8, the court may order the committed person released with or without supervision if any of the following apply:

a. The attorney general stipulates to the release with or without supervision.

b. The court or jury has determined that the person should be discharged from the program, but the court has determined it is in the best interest of the community to order release with or without supervision before the committed person is discharged.

2. If release with or without supervision is ordered, the department of human services shall prepare within thirty days of the order of the court a release plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug abuse treatment, sex offender treatment, or any other treatment or supervision necessary.

3. The court shall set a hearing on the release plan prepared by the department of human services before the committed person is released from a secure facility or a transitional release program.

4. If the court orders release with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the placement of criminal offenders in the community. The agency with jurisdiction shall be responsible for initiating proceedings for violations of the release plan as provided in section 229A.9B. If the court orders release without supervision, the agency with jurisdiction shall also be responsible for initiating proceedings for any violations of the release plan as provided in section 229A.9B.

5. A committed person may not petition the court for release with or without supervision.

6. A committed person released with or without supervision is not considered discharged from civil commitment under this chapter.

7. After being released with or without supervision, the person may petition the court for discharge as provided in section 229A.8.

8. The court shall retain jurisdiction over the committed person who has been released with or without supervision until the person is discharged from the program. The department of human services shall not be held liable for any acts committed by a committed person who has been ordered released with or without supervision.

Sec. 14. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH OR WITHOUT SUPERVISION.

1. If a committed person violates the release plan, the agency with jurisdiction over the person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person has absconded in violation of the conditions of the person's release plan, a presumption arises that the person poses a risk to public safety. The department of human services or contracting agency, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the committed person is on release with or without supervision from the sexually violent predator program, and any other information pertinent to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the committed person has been returned to a secure facility, and the court shall set hearing within five days to determine if a violation occurred. If a court order was not

issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the conditions of the release plan occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned to a secure facility.

4. At the hearing the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the release plan occurred.

5. If the court determines a violation occurred, the court shall receive release recommendations from the department of human services and either order that the committed person be returned to release with or without supervision or placed in a transitional release program, or be confined in a secure facility. The court may impose further conditions upon the committed person if returned to release with or without supervision or placed in the transitional release program. If the court determines no violation occurred, the committed person shall be returned to release with or without supervision.

Sec. 15. Section 229A.10, Code 2001, is amended to read as follows:

229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

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

general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is-not-safe-to-be-at-large and-that-if-discharged is likely to commit engage in predatory acts or-sexually-violent that constitute sexually violent offenses if discharged.

2. Upon a finding that the state has failed to meet its burden of proof under this section, or-a-stipulation-by-the state, the court shall authorize the-release-of the committed person to be discharged. Release-may-be-ordered-with-or without-supervision;--if-supervised-release-is-ordered, the department-of-human-services-shall-prepare-a-plan-addressing the-person's-needs-for-counseling,-medication,-community support-services,-residential-services,-vocational-services, alcohol-and-other-drug-abuse-treatment,-and-any-other treatment-or-supervision-necessary;--if-the-court-orders-the release-of-the-committed-person-with-supervision,-the-court shall-order-supervision-by-an-agency-with-jurisdiction-that-is familiar-with-the-placement-of-criminal-offenders-in-the community:

Sec. 16. Section 229A.11, Code 2001, is amended to read as follows:

229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.
 Nothing in this chapter shall prohibit a person from filing a petition for discharge or placement in a transitional release program, pursuant to this chapter. However, if a person has previously filed a petition for discharge or for placement in a transitional release program without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was safe-to-be-at-large not likely to engage in predatory acts constituting sexually violent offenses if discharged, or was not suitable for placement in the transitional release program, then the court shall summarily deny the subsequent petition unless the petition contains facts upon which a court

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

Sec. 17. Section 229A.12, Code 2001, is amended to read as follows:

229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR COSTS -- REIMBURSEMENT.

The director of human services shall be responsible for all costs relating to the evaluation, treatment, and services provided to persons a person that are incurred after the person is committed to the director's custody after the court or jury determines that the respondent is a sexually violent predator and pursuant to commitment under any provision of this chapter. If placement in a transitional release program or supervision is ordered pursuant-to-section-229A-10, the director shall also be responsible for all costs related to the transitional release program or to the supervision and treatment of any person. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of confinement, or of care and treatment provided. As used in this section, "any person legally liable" does not include a political subdivision.

Sec. 18. **NEW SECTION.** 229A.12A DIRECTOR OF THE DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

The director of the department of corrections shall have authority, once a person is detained pursuant to section 229A.5, to make a determination as to the appropriate secure facility within the department of corrections in which the safekeeper is to be placed, taking into consideration the safekeeper's medical needs and ability to interact with offenders who have been committed to the custody of the

director of the department of corrections. The director has authority to determine the safekeeper's degree of segregation from offenders, including whether total segregation is appropriate under the circumstances or whether the safekeeper should be permitted to participate in normal confinement activities in the presence of offenders.

Sec. 19. Section 229A.14, Code 2001, is amended to read as follows:

229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

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

Sec. 20. **NEW SECTION.** 229A.15A CIVIL PROTECTIVE ORDER.

A victim of a crime that was committed before the filing of a petition under this chapter by a safekeeper or by a person subjected to an order of civil commitment pursuant to this chapter, may obtain a protective order against the safekeeper or person using the procedures set out in section 915.22.

Sec. 21. **NEW SECTION.** 229A.15B RULEMAKING AUTHORITY.

The department of human services shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

Sec. 22. Section 811.1, subsections 1 and 2, Code 2001, are amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any

felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent offense under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

2. A defendant appealing a conviction of a class "A" felony; murder; any class "B" or "C" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent conviction under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

Sec. 23. Section 901A.1, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 3. As used in this chapter, the term "sexually violent offense" means the same as defined in section 229A.2.

Sec. 24. Section 901A.2, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. A person who has been placed in a transitional release program, released with or without supervision, or discharged pursuant to chapter 229A, and who is subsequently convicted of a sexually predatory offense or a sexually violent offense, shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection. However, if

the person commits a sexually violent offense which is a misdemeanor offense under chapter 709, the person shall be sentenced to life in prison, with eligibility for parole as provided in chapter 906.

Sec. 25. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Sec. 26. DIRECTIVE TO CODE EDITOR. The Code editor is directed to renumber sections in chapter 229A and correct internal references as necessary in conjunction with the enactment of this Act.

Sec. 27. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2286, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 30, 2002

THOMAS J. VILSACK
Governor

S.F. 2286