

Sec. 6. Section 730.5, subsection 9, paragraph g, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section ~~but less than the concentration level in section 321J.2 for operating while under the influence of alcohol~~, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

Sec. 7. Section 730.5, subsection 9, paragraph h, Code 1999, is amended to read as follows:

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file ~~of employee assistance services providers maintained by the employer pursuant to paragraph "c", subparagraph (2).~~

Sec. 8. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 26, 1999

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## CHAPTER 61

### COMMITMENT OF SEXUALLY VIOLENT PREDATORS

S.F. 216

**AN ACT** relating to the commitment of sexually violent predators, by changing the deadline for filing a petition by the attorney general; providing for waiver or continuance of the probable cause hearing; granting greater enforcement power to the prosecuting attorney; extending the time to hold a trial; establishing supervised release for sexually violent persons who have been rehabilitated; providing for the preservation of certain child abuse reports; providing the department of justice with access to such reports; and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 229A.2, Code 1999, is amended by adding the following new subsection:  
**NEW SUBSECTION.** 1A. "Appropriate secure facility" means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

Sec. 2. Section 229A.4, subsection 1, Code 1999, is amended to read as follows:

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition, ~~within seventy-five days of the date the attorney general received the written notice by the agency of jurisdiction pursuant to section 229A.3,~~ alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

Sec. 3. Section 229A.5, subsection 2, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. The hearing may be waived by the respondent. The hearing 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 if the respondent is not substantially prejudiced. At the probable cause hearing, the detained person shall have the following rights:

Sec. 4. Section 229A.5, subsection 5, Code 1999, is amended to read as follows:

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

Sec. 5. NEW SECTION. 229A.5A POWERS OF INVESTIGATIVE PERSONNEL BEFORE A PETITION IS FILED.

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

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

Sec. 6. Section 229A.7, subsection 2, Code 1999, is amended to read as follows:

2. Within ~~sixty~~ ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held pursuant to under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. 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. 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 ~~four~~ 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.

Sec. 7. Section 229A.7, subsection 5, Code 1999, is amended to read as follows:

5. If the court or jury is not satisfied beyond a reasonable doubt that the respondent is a sexually violent predator, the court shall direct the respondent's release. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility, ~~including, but not limited to, a county jail,~~ 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 as provided in subsection 1.

Sec. 8. Section 229A.10, Code 1999, 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 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 predatory acts or sexually violent offenses.

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. 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. 9. Section 229A.12, Code 1999, is amended to read as follows:

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

The director of human services shall be responsible for all costs relating to the evaluation ~~and, treatment of, and services provided to~~ persons 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 supervision is ordered pursuant to section 229A.10, the director shall also be responsible for all costs related to the supervision 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 care and treatment provided. As used in this section, "any person legally liable" does not include a political subdivision.

Sec. 10. Section 235A.15, subsection 2, paragraph d, Code 1999, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

Sec. 11. Section 235A.15, subsection 3, Code 1999, is amended by adding the following new paragraph:

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

Sec. 12. Section 235A.15, subsection 4, Code 1999, is amended by adding the following new paragraph:

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

Sec. 13. Section 235A.18, subsection 1, paragraphs a and b, Code 1999, are amended to read as follows:

a. Report and disposition data relating to a particular case of alleged child abuse shall be sealed ten years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of an alleged case of child abuse involving the child named in the initial data placed in the registry as the victim of abuse or a person named in the data as having abused a child is received by the department within this ten-year period, the data shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. However, such report and disposition data shall be made available to the department of justice if the department requests access to the alleged child abuse records for purposes of review by the prosecutor's review committee or commitment of sexually violent predators under chapter 229A.

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

Sec. 14. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 26, 1999