
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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JULY 15, 1997

REFERRED TO COMMITTEE ON JUDICIARY, JULY 15, 1997

AN ACT

1 Requiring certain inmates with mental abnormalities to be
2 evaluated for and subject to involuntary civil commitment and
3 providing for treatment during their commitment.

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8 Section 1. Short title.

9 This act shall be known and may be cited as the Sexually
10 Violent Predator Act.

11 Section 2. Legislative findings.

12 The General Assembly finds and declares as follows:

13 (1) There are inmates confined to correctional
14 institutions in this Commonwealth who are sexually violent
15 predators and who do not have a severe mental disability that
16 renders them appropriate for involuntary commitment and
17 treatment under the act of July 9, 1976 (P.L.817, No.143),
18 known as the Mental Health Procedures Act.

19 (2) The purpose of the Mental Health Procedures Act is
20 to provide short-term treatment to persons who are severely
21 mentally disabled so that they may be returned to the
22 community when they no longer present a danger to themselves
23 or others.

24 (3) The treatment needs of sexually violent predators
25 are very long term, and the treatment modalities for this
26 population are very different than the traditional treatment
27 modalities for persons who are severely mentally disabled.

28 (4) In contrast to persons appropriate for commitment
29 under the Mental Health Procedures Act, sexually violent
30 predators generally have antisocial personality features

1 which are unamenable to existing mental illness treatment
2 modalities and render them likely to engage in sexually
3 violent behavior that causes harm to children and other
4 persons.

5 (5) The existing involuntary commitment procedure under
6 the Mental Health Procedures Act is inadequate to address the
7 risk that sexually violent predators pose to society.

8 (6) A civil commitment procedure for the long-term care
9 and treatment of sexually violent predators is necessary for
10 the health, welfare and safety of the citizens of this
11 Commonwealth.

12 Section 3. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Agency." An agency that releases upon lawful order or
17 authority a person serving a sentence or term of confinement.
18 The term includes, but is not limited to, the Department of
19 Corrections, the Department of Public Welfare and the
20 Pennsylvania Board of Probation and Parole.

21 "Mental abnormality." A congenital or acquired condition
22 affecting the emotional or volitional capacity of a person which
23 predisposes the person to commit sexually violent offenses to
24 such a degree that the person represents a menace to the health,
25 safety and welfare of others.

26 "Multidisciplinary team." The group of individuals selected
27 by the Secretary of Corrections of the Commonwealth in
28 accordance with section 5.

29 "Predatory." The nature of an act that is directed towards
30 strangers or individuals with whom relationships have been

1 established or promoted for the primary purpose of
2 victimization.

3 "Sexually motivated." One of the purposes for which a
4 defendant commits a crime is the defendant's sexual
5 gratification.

6 "Sexually violent offense." Any of the following:

7 (1) Rape as defined under 18 Pa.C.S. § 3121 (relating to
8 rape).

9 (2) Statutory sexual assault as defined under 18 Pa.C.S.
10 § 3122.1 (relating to statutory sexual assault).

11 (3) Involuntary deviate sexual intercourse as defined
12 under 18 Pa.C.S. § 3123 (relating to involuntary deviate
13 sexual intercourse).

14 (4) Sexual assault as defined under 18 Pa.C.S. § 3124.1
15 (relating to sexual assault).

16 (5) Aggravated indecent assault as defined under 18
17 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 (6) Indecent assault as defined under 18 Pa.C.S. § 3126
19 (relating to indecent assault).

20 (7) Indecent exposure as defined under 18 Pa.C.S. § 3127
21 (relating to indecent exposure).

22 (8) A conviction for an offense that is graded as a
23 felony in effect at any time prior to the effective date of
24 this act, that is comparable to any of the offenses set forth
25 in paragraphs (1) through (7), or any Federal or other state
26 conviction for an offense graded as a felony that under the
27 laws of this Commonwealth would constitute or be comparable
28 to any of the offenses set forth in paragraphs (1) through
29 (7).

30 (9) A criminal attempt, solicitation or conspiracy, as

1 those terms are defined under 18 Pa.C.S. §§ 901 (relating to
2 criminal attempt), 902 (relating to criminal solicitation)
3 and 903 (relating to criminal conspiracy).

4 (10) Any act specified in a crime or offense under 18
5 Pa.C.S. (relating to crimes and offenses) which either at the
6 time of sentencing for the offense or subsequently during
7 civil commitment proceedings under this act, is determined
8 beyond a reasonable doubt to have been sexually motivated.

9 "Sexually violent predator." A person who has been convicted
10 of or charged with a sexually violent offense and who suffers
11 from a mental abnormality or personality disorder which makes
12 the person likely to engage in the predatory acts of sexual
13 violent if not confined in a secure facility.

14 Section 4. Prerelease notification.

15 (a) General rule.--When it appears that a person may meet
16 the criteria of a sexually violent predator, the agency shall
17 give written notice to the Attorney General, or designee of the
18 Attorney General and the multidisciplinary team, at least 90
19 days prior to:

20 (1) The anticipated release from total confinement of a
21 person who has been convicted of a sexually violent offense.
22 In the case of a person who is returned to prison for no more
23 than 90 days as a result of revocation of probation or
24 parole, the agency shall give the notice as soon as
25 practicable following the person's readmission to prison.

26 (2) The release of a person who has been charged with a
27 sexually violent offense and who is deemed to be incompetent
28 to be tried, convicted or sentenced under section 402 of the
29 act of July 9, 1976 (P.L.817, No.143), known as the Mental
30 Health Procedures Act.

(3) The release of a person who has been found not guilty by reason of insanity as defined under 18 Pa.C.S. § 315 (relating to insanity) of a sexually violent offense.

(b) Contents of notice.--The notification required by subsection (a) shall contain the following:

(1) The person's name, identifying factors, anticipated future residence and criminal history record.

(2) Documentation of correctional institution adjustments and any treatment received while confined in the correctional institution.

Section 5. Multidisciplinary team.

(a) Established.--The Secretary of Corrections shall designate individuals to serve on a multidisciplinary team which is hereby established to review available documentation and records of each person referred under section 4. The team may include individuals from other departments.

(b) Duty.--Within 30 days of receipt of the notice required by section 4, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator and provide the Attorney General and the prosecutor's review committee with the assessment.

Section 6. Prosecutor's review committee.

(a) Established.--The Attorney General shall appoint individuals to serve on a prosecutor's review committee which is hereby established to review the documentation and records of each person referred under section 4.

(b) Duty.--The prosecutor's review committee shall assist the Attorney General in a determination of whether the person meets the definition of a sexually violent predator.

Section 7. Civil commitment petition.

1 When it appears that the person presently confined may be a
2 sexually violent offender and the prosecutor's review committee
3 has determined that the person meets the definition of a
4 sexually violent predator, the Attorney General shall file a
5 petition in the court of common pleas of the county in which the
6 person is incarcerated, within 75 days of the date the Attorney
7 General received the written notice by the agency. The petition
8 must allege that the person is a sexually violent predator,
9 state sufficient facts to support the allegation and request an
10 order that the person be taken into custody in accordance with
11 this act.

12 Section 8. Initial court determination and probable cause
13 hearing.

14 (a) General rule.--Upon filing of a petition under section
15 7, the court shall determine whether probable cause exists to
16 believe that the person named as respondent in the petition is a
17 sexually violent predator. If the court determines that there is
18 probable cause, the court shall issue an order that the
19 respondent be taken into or remain in custody.

20 (b) Content of initial court determination.--Within 72 hours
21 after the respondent is taken into or ordered to remain in
22 custody, the court shall provide the person with notice of and
23 an opportunity to appear at a hearing to contest the
24 determination of probable cause.

25 (c) Probable cause hearing.--At the probable cause hearing:

26 (1) The court shall verify the identity of the
27 respondent in custody and determine whether probable cause
28 exists to believe that the respondent is a sexually violent
29 predator.

30 (2) The Attorney General may rely on the petition and

1 supplement the petition with additional documentary evidence
2 or testimony.

3 (3) The respondent shall have the rights, in addition to
4 other rights provided for in this act, to be represented by
5 counsel, to present evidence, to cross-examine witnesses who
6 testify against him and to view and copy all petitions and
7 documentary evidence in the court's file.

8 (d) Transfer.--If after the hearing the court upholds the
9 initial determination of probable cause, the court shall order
10 the respondent to be transferred to an appropriate secure
11 facility, including, but not limited to, a State or county
12 correctional institution and shall provide in its order that a
13 qualified professional conduct an evaluation of the respondent
14 as to whether the respondent is a sexually violent predator.

15 Section 9. Commitment trial.

16 (a) General rule.--Within 60 days after completion of the
17 probable cause hearing under section 7, the court shall conduct
18 a commitment trial to determine whether the respondent is a
19 sexually violent predator. The trial may be continued at the
20 request of either the Attorney General or the respondent and
21 upon a showing of good cause. The court may also, on its own
22 motion, in the due administration of justice and when the
23 respondent will not be substantially prejudiced, continue the
24 trial.

25 (b) Rights of respondents.--At all stages of the proceedings
26 under this act, a respondent shall be entitled to the assistance
27 of counsel and, if the respondent is indigent, the court shall
28 appoint counsel to assist the respondent.

29 (c) Examinations.--Whenever a respondent is subject to an
30 examination under this act, the respondent may retain experts or

1 professional persons to perform the same or similar types of
2 examination on the respondent's behalf. If the respondent wishes
3 to be examined by a qualified expert or professional of the
4 respondent's own choice, the expert or professional shall be
5 permitted reasonable access to the respondent for the purpose of
6 such examination, as well as to all relevant medical and
7 psychological records and reports pertaining to the respondent.

8 (d) Examination costs for indigents.--If a respondent who is
9 indigent wishes to be examined by a qualified expert or
10 professional of the respondent's choice, the court, upon the
11 respondent's request, shall determine whether the services are
12 necessary and whether compensation for the services is
13 reasonable. If the court determines that the services are
14 necessary and the compensation is reasonable, the court shall
15 assist the respondent in obtaining an expert or professional to
16 perform the examination or to participate in the trial on the
17 respondent's behalf. The court shall approve payment for such
18 services upon the filing of a certified claim for compensation
19 supported by a written statement specifying the time expended,
20 services rendered, expenses incurred on behalf of the respondent
21 and compensation received in the same case or for the same
22 services from any other source.

23 (e) Jury trial.--The respondent and the Attorney General
24 shall have the right to demand and the court upon its own motion
25 may order that the trial be heard before a jury. The demand for
26 a jury trial shall be filed in writing at least four days prior
27 to the trial. The number and selection of jurors shall be
28 determined as provided by law. If no demand is made, the trial
29 shall be heard before the court.

30 (f) Standard of proof.--The court or jury shall determine

1 whether, beyond a reasonable doubt, the respondent is a sexually
2 violent predator. If the determination is made by a jury, the
3 determination must be unanimous.

4 (1) If the court or jury is not satisfied beyond a
5 reasonable doubt that the respondent is a sexually violent
6 predator, the court shall order the respondent to be
7 released.

8 (2) If a mistrial occurs, the court shall order the
9 respondent to be held at an appropriate secure facility,
10 including, but not limited to, a county correctional
11 institution, until another commitment trial may be conducted
12 in accordance with this act. Any subsequent commitment trial
13 that follows a mistrial shall be held within 90 days of the
14 first commitment trial, unless the subsequent commitment
15 trial is continued as provided in subsection (a).

16 (g) Appeal.--The determination of the court or jury under
17 this section may be appealed.

18 (h) Commitment order.--If the court or jury determines that
19 the respondent is a sexually violent predator in accordance with
20 this act, the court shall issue an order to commit the
21 respondent to the custody of the Secretary of Public Welfare for
22 care, control and treatment until such time as the respondent's
23 mental abnormality has so changed that the respondent no longer
24 is a sexually violent predator.

25 (i) Place of commitment.--The care, control and treatment
26 ordered by the court shall be provided at a facility operated by
27 the Department of Public Welfare. At all times, persons
28 committed under this act shall be kept in a secure facility and
29 they shall be segregated at all times from any other patients
30 under the supervision of the Secretary of Public Welfare.

1 Section 10. Interagency agreements.

2 The Department of Public Welfare is authorized to enter into
3 an interagency agreement with the Department of Corrections for
4 the commitment of persons under this act. The interagency
5 agreement shall provide that the persons committed under this
6 act shall be housed and managed separately from any offenders in
7 the custody of the Secretary of Public Welfare and except for
8 occasional instances of supervised incidental contact, shall be
9 segregated from those offenders.

10 Section 11. Persons incompetent to stand trial.

11 (a) Hearing.--If a person charged with a sexually violent
12 offense has been found incompetent to stand trial, is scheduled
13 for release under the laws of this Commonwealth and the Attorney
14 General seeks commitment of the person under section 9, the
15 court shall first hear evidence in order to determine whether
16 the respondent committed the act charged. The hearing on this
17 issue shall comply with the provisions of section 7, the rules
18 of evidence applicable in criminal cases shall apply, and all
19 constitutional rights available to defendants at criminal
20 trials, other than any right not to be tried while incompetent,
21 shall apply.

22 (b) Findings.--After hearing evidence under subsection (a),
23 the court shall make specific findings regarding the following:

24 (1) Whether the respondent committed the act charged.

25 (2) The extent to which the respondent's incompetence or
26 developmental disability affected the outcome of the hearing,
27 including its effect on the respondent's ability to consult
28 with and assist counsel and to testify on the respondent's
29 own behalf.

30 (3) The extent to which evidence may be reconstructed

1 without the respondent's assistance.

2 (4) The strength of the prosecution's case.

3 (c) Final order.--If after the conclusion of the hearing in
4 subsection (a) the court finds beyond a reasonable doubt that
5 the respondent committed the act charged, the court shall enter
6 a final order, appealable by the respondent, and may proceed to
7 consider whether the respondent should be committed under
8 section 9.

9 Section 12. Annual examination and hearings.

10 (a) General rule.--The Secretary of Public Welfare shall
11 conduct an annual examination of the mental condition of each
12 respondent committed under this act. The examination shall be
13 conducted as close as practicable to the anniversary date of the
14 respondent's commitment, and a written report shall be prepared
15 containing the results of the examination. The respondent may
16 retain, or if indigent may request that the court appoint, a
17 qualified professional to examine the respondent, and the expert
18 or professional person shall have access to all records
19 concerning the respondent.

20 (b) Secretary's duties.--The Secretary of Public Welfare
21 shall:

22 (1) Provide the report of the examination conducted
23 under subsection (a) to the court that committed the
24 respondent.

25 (2) Provide the respondent with a written notice
26 regarding the respondent's right to petition the court for
27 release over the secretary's objection. The notice shall
28 contain a waiver of rights for the respondent to sign.

29 (3) Forward the notice and waiver of rights, if any, to
30 the court with the report.

1 (c) Preliminary review hearing.--The court shall schedule a
2 hearing to review the report provided under subsection (a) and
3 to determine whether the respondent no longer remains a sexually
4 violent predator. The respondent shall have the right to be
5 represented by counsel, but the respondent shall not be entitled
6 to appear at the hearing. If the court determines that probable
7 cause exists that the respondent's mental abnormality has so
8 changed or responded to treatment that the respondent is no
9 longer a sexually violent predator, then the court shall
10 schedule a final review hearing to determine whether the person
11 remains a sexually violent predator.

12 (d) Final review hearing.--At the final review hearing:

13 (1) The respondent shall have the right to appear, to be
14 represented by counsel and to all constitutional protections
15 that were afforded the person at the initial commitment
16 hearing under section 9.

17 (2) The respondent shall have the right to utilize
18 experts to evaluate the respondent's mental condition and if
19 indigent, may request that the court appoint an expert.

20 (3) The Attorney General shall represent the
21 Commonwealth, have the right to request a jury trial and to
22 have the respondent evaluated by experts chosen by the
23 Commonwealth.

24 (4) The burden of proof shall be upon the Commonwealth
25 to prove beyond a reasonable doubt that the respondent's
26 mental abnormality remains such that the respondent remains a
27 sexually violent predator.

28 (e) Request for release.--Nothing contained in this section
29 shall prohibit a respondent from petitioning the court for
30 discharge from commitment during the proceedings required by

1 this section.

2 Section 13. Conformity to constitutional requirements.

3 The involuntary commitment of persons under this act shall
4 conform to constitutional requirements for care and treatment.

5 Section 14. Petition for release and procedure.

6 (a) General rule.--If at any time the Secretary of Public
7 Welfare determines that the respondent's mental abnormality has
8 so changed that the respondent is no longer a sexually violent
9 predator, the secretary shall inform the respondent in writing
10 and the secretary shall petition the court for release. The
11 petition shall be served on the respondent and the Attorney
12 General. The court, upon receipt of the petition for release,
13 shall order a hearing within 30 days. The Attorney General shall
14 represent the Commonwealth, and shall have the right to have the
15 respondent examined by an expert or professional person of such
16 attorney's choice. The hearing shall be before a jury if
17 demanded by either the respondent or the Attorney General. The
18 burden of proof shall be upon the Attorney General to show
19 beyond a reasonable doubt that the respondent's mental
20 abnormality remains such that the respondent is not safe to be
21 at large and that if discharged is likely to commit predatory
22 acts of sexual violence.

23 Section 15. Subsequent discharge petitions.

24 Nothing in this act shall prohibit a person committed under
25 this act from filing a petition for discharge. However, if the
26 person has previously filed a petition for discharge without the
27 approval of the Secretary of Public Welfare and the court
28 determined either upon review of the petition or following a
29 hearing, that the person's petition was frivolous or that the
30 person's condition had not so changed that the person was no

1 longer a sexually violent predator, then the court shall deny
2 the subsequent petition unless the petition contains new facts
3 upon which a court could find the condition of the person had so
4 changed that a hearing was warranted. Upon receipt of a first or
5 subsequent petition from a person without the secretary's
6 approval, the court shall endeavor whenever possible to review
7 the petition and determine if the petition is based upon
8 frivolous grounds and if so shall deny the petition without a
9 hearing.

10 Section 16. Costs of evaluation and treatment.

11 The Secretary of Public Welfare shall be responsible for all
12 costs relating to the evaluation and treatment of persons
13 committed to the secretary's custody under this act.

14 Section 17. Notice to victims of release of persons committed.

15 In addition to any other information required to be released
16 under this act, prior to the release of a person committed under
17 this act, the Secretary of Public Welfare shall give written
18 notice of the release to any victim of the person's activities
19 or crime who is alive and whose address is known to the
20 secretary or, if the victim is deceased, to the victim's family,
21 if the family's address is known to the secretary. Failure to
22 notify shall not be a reason for postponement of release.

23 Nothing in this section shall create a cause of action against
24 the Commonwealth or an employee of the Commonwealth acting
25 within the scope of the employee's employment as a result of the
26 failure to notify under this section.

27 Section 18. Confidential or privileged information and records.

28 (a) General rule.--In order to protect the public, relevant
29 information and records which are otherwise confidential or
30 privileged shall be released to the agency with jurisdiction or

1 the Attorney General for the purpose of meeting the notice
2 requirement provided in section 4 and to determine whether a
3 person is or remains a sexually violent predator.

4 (b) Sealed records.--Any psychological reports, drug and
5 alcohol reports, treatment records, reports of the diagnostic
6 center, medical records or victim impact statements which have
7 been submitted to the court or admitted into evidence under this
8 act shall be part of the record but shall be sealed and opened
9 only on order of the court or as provided by law.

10 Section 19. Severability.

11 The provisions of this act are severable. If any provision of
12 this act or its application to any person or circumstance is
13 held invalid, the invalidity shall not affect other provisions
14 or applications of this act which can be given effect without
15 the invalid provision or application.

16 Section 20. Effective date.

17 This act shall take effect in 60 days.