

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1811 Session of
1997

INTRODUCED BY ORIE, McNAUGHTON, KENNEY, STEVENSON, BOSCOLA,
STABACK, BLAUM, GORDNER, SAYLOR, RUBLEY, DeLUCA, GEIST,
BELARDI, EGOLF, HERSHEY, TRUE, LEDERER, GIGLIOTTI, B. SMITH,
FICHTER, MILLER, CLARK, LYNCH, HERMAN, C. WILLIAMS,
VAN HORNE, J. TAYLOR, DALLY, READSHAW, E. Z. TAYLOR,
HENNESSEY, ROSS, YOUNGBLOOD, D. W. SNYDER, PLATTS, LAUGHLIN,
STEELMAN, SEYFERT, LEH AND TRELLO, SEPTEMBER 30, 1997

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 30, 1997

AN ACT

1 Establishing a civil procedure for the involuntary commitment of
2 sexually violent predators.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Sexually
7 Violent Predators Act.

8 Section 2. Legislative findings.

9 The General Assembly finds that a civil involuntary
10 commitment procedure for the long-term care and treatment of
11 sexually violent predators is necessary for the following
12 reasons:

13 (1) Sexually violent predators generally have
14 personality features which are unamenable to existing mental
15 illness treatment modalities, and those features render them

1 highly likely to engage in repeat acts of predatory sexual
2 violence.

3 (2) Sexually violent predators do not have a mental
4 disease or defect that renders them appropriate for
5 involuntary treatment pursuant to the provisions of the act
6 of July 9, 1976 (P.L.817, No.143), known as the Mental Health
7 Procedures Act.

8 (3) The treatment modalities for sexually violent
9 predators are very different from the traditional modalities
10 for people appropriate for commitment under the Mental Health
11 Procedures Act.

12 (4) The involuntary commitment procedure provided for in
13 the Mental Health Procedures Act is inadequate to address the
14 risks sexually violent predators pose to society.

15 (5) The prognosis for rehabilitating sexually violent
16 predators in a prison setting is poor.

17 Section 3. Definitions.

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

21 "Agency with jurisdiction." The agency which releases upon
22 lawful order or authority a person who is serving a sentence or
23 term of confinement, or is otherwise being detained. This term
24 includes the Department of Corrections or a county correctional
25 facility.

26 "Mental abnormality." A congenital or acquired condition of
27 a person that affects the emotional or volitional capacity of
28 the person in a manner that predisposes that person to the
29 commission of criminal sexual acts to a degree that makes the
30 person a menace to the health and safety of other persons.

1 "Predatory act." An act directed at a person for the primary
2 purpose of victimization.

3 "Prosecuting attorney." The district attorney of the county
4 which prosecuted the case or the Attorney General if the
5 Attorney General originally prosecuted the case or if the
6 Attorney General agrees to handle the proceeding under this act
7 at the request of the district attorney.

8 "Sexually violent offense."

9 (1) Any of the following offenses that is classified as
10 a felony and involves a victim who is a minor:

11 18 Pa.C.S. § 2901 (relating to kidnapping) except by
12 a parent.

13 18 Pa.C.S. § 5902(a) (relating to prostitution and
14 related offenses).

15 18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to
16 obscene and other sexual materials and performances).

17 (2) Any of the following offenses regardless of the age
18 of the victim:

19 18 Pa.C.S. § 3121 (relating to rape).

20 18 Pa.C.S. § 3123 (relating to involuntary deviate
21 sexual intercourse).

22 18 Pa.C.S. § 3125 (relating to aggravated indecent
23 assault).

24 (3) Any of the following offenses when the offense is a
25 misdemeanor of the first degree:

26 18 Pa.C.S. § 3126 (relating to indecent assault).

27 "Sexually violent predator." A person who has been convicted
28 of a sexually violent offense or who has been charged with a
29 sexually violent offense but found to be incompetent to stand
30 trial and who is determined to be a sexually violent predator

1 under this act because of a mental abnormality or personality
2 disorder that makes the person likely to engage in predatory
3 sexually violent offenses.

4 Section 4. Preliminary assessment and notice.

5 (a) Preliminary assessment by multidisciplinary team.--The
6 Department of Corrections shall establish a multidisciplinary
7 team of criminal justice and mental health experts, including
8 persons expert in the field of sexual violence or abuse, that
9 shall review available records of each person eligible for
10 release who has been convicted of a sexually violent offense or
11 who has been charged with a sexually violent offense but found
12 to be incompetent to stand trial. If the agency with
13 jurisdiction is not the Department of Corrections, the agency
14 with jurisdiction shall provide the department with the records
15 which are necessary for the review by the multidisciplinary
16 team. The multidisciplinary team shall make a preliminary
17 assessment of whether or not the person meets the definition of
18 a sexually violent predator. The multidisciplinary team shall
19 review the records and make the preliminary assessment no
20 earlier than 120 days prior to release. The multidisciplinary
21 team shall notify the Department of Corrections in writing of
22 its preliminary assessment. If the agency with jurisdiction is
23 not the Department of Corrections, the department shall forward
24 the multidisciplinary team's preliminary assessment to the
25 agency with jurisdiction, and the agency with jurisdiction shall
26 reimburse the department for its use of the multidisciplinary
27 team. For purposes of this subsection, the term "eligible for
28 release" means that the person is near the end of his maximum
29 sentence or has been granted parole.

30 (b) Notice to be given to prosecuting attorney.--If the

1 multidisciplinary team's preliminary assessment is that the
2 person meets the definition of a sexually violent predator, the
3 agency with jurisdiction shall give written notice of the
4 preliminary assessment to the prosecuting attorney 90 days prior
5 to:

6 (1) The anticipated release from confinement of a person
7 who has been convicted of a sexually violent offense, except
8 that in the case of a person who is returned to prison for no
9 more than 90 days as a result of revocation of post-release
10 supervision, written notice shall be given as soon as
11 practicable following the person's return to prison.

12 (2) The release of a person who has been charged with a
13 sexually violent offense but who has been found to be
14 incompetent to stand trial.

15 (c) Information to be provided to prosecuting attorney.--The
16 agency with jurisdiction shall provide the prosecuting attorney
17 with the following information:

18 (1) The person's name, identifying factors, anticipated
19 future residence and offense history.

20 (2) Documentation of institutional adjustment and any
21 treatment received.

22 (d) Notice to authorizing agency or official.--At the same
23 time that the agency with jurisdiction gives notice to the
24 prosecuting attorney, the agency with jurisdiction shall, if
25 applicable, provide written notice to the agency or official who
26 authorized the person's parole. This notice shall serve to
27 suspend the parole authorization until any proceedings under
28 this act have been concluded, including any period of
29 involuntary commitment.

30 Section 5. Probable cause hearing.

1 (a) Petition.--Within 75 days after receiving notice from
2 the agency with jurisdiction, the prosecuting attorney may file
3 a petition for civil commitment alleging that the person is a
4 sexually violent predator and stating sufficient facts to
5 support the allegation.

6 (b) Notice.--Within 72 hours after a petition is filed, the
7 court shall provide the person with notice of and an opportunity
8 to appear in person at a hearing to contest probable cause as to
9 whether the person is a sexually violent predator.

10 (c) Hearing.--At the probable cause hearing, the court shall
11 verify the person's identity and determine whether probable
12 cause exists to believe that the person is a sexually violent
13 predator. The prosecuting attorney may rely upon the petition
14 and supplement the petition with additional documentary evidence
15 or live testimony. The person shall have the following rights in
16 addition to rights specified in this act:

17 (1) To be represented by counsel.

18 (2) To present evidence on the person's behalf.

19 (3) To cross-examine witnesses who testify against the
20 person.

21 (4) To view and copy all petitions and reports in the
22 court file.

23 (d) Transfer to appropriate facility.--If the court
24 determines that there is probable cause, the court shall direct
25 that the person be transferred to an appropriate secure
26 facility, including, but not limited to, a county jail, for an
27 evaluation as to whether the person is a sexually violent
28 predator. The person shall not be held in a regional forensic
29 unit at a State hospital. The evaluation shall be conducted by a
30 professionally qualified expert in the field of sexual violence

1 or abuse. In no event shall the person be released from
2 confinement prior to trial.

3 (e) Notice to agency with jurisdiction.--If the prosecuting
4 attorney chooses not to file a petition pursuant to subsection
5 (a) or, following the hearing, if the court finds that probable
6 cause does not exist, the prosecuting attorney shall provide
7 written notice of the decision to the agency with jurisdiction
8 which, in turn, shall, if applicable, provide written notice to
9 the agency or official who authorized parole, and the person's
10 release or parole may proceed.

11 Section 6. Trial, counsel and examination.

12 (a) Time of trial.--Within 60 days after the completion of
13 the probable cause hearing, the court shall conduct a trial to
14 determine whether the person is a sexually violent predator. The
15 trial may be continued upon the request of either party and a
16 showing of good cause or by the court on its own motion in the
17 due administration of justice and when the person who is the
18 subject of the proceeding will not be substantially prejudiced.

19 (b) Jury trial.--The person who is the subject of the
20 proceeding or the prosecuting attorney shall have the right to
21 demand that the trial be before a jury. The demand for the trial
22 to be before a jury shall be filed in writing at least four days
23 prior to trial. The number and selection of jurors shall be as
24 provided by law for civil cases and the Pennsylvania Rules of
25 Civil Procedure. If no demand is made, the trial shall be held
26 before the judge.

27 (c) Counsel.--At all stages of the proceedings under this
28 act, any person who is subject to this act shall be entitled to
29 the assistance of counsel and, if the person is indigent, the
30 court shall appoint counsel to assist the person.

1 (d) Examination.--Whenever any person is subjected to an
2 examination under this act, the person may retain professionally
3 qualified experts in the field of sexual violence or abuse to
4 perform an examination of the person on the person's behalf.
5 When the person wishes to be examined by a qualified expert of
6 the person's own choice, the examiner shall be permitted to have
7 reasonable access to the person for the purpose of the
8 examination, as well as to relevant medical and psychological
9 records and reports.

10 (e) Indigent persons.--In the case of a person who is
11 indigent, the court, upon the person's request, shall determine
12 whether the services are necessary and reasonable compensation
13 for the services. The court shall assist the person in obtaining
14 a professionally qualified expert in the field of sexual
15 violence or abuse to perform an examination or participate in
16 the trial on the person's behalf. The court shall approve
17 payment for the services upon the filing of a certified claim
18 for compensation supported by a written statement specifying the
19 time expended, services rendered, expenses incurred on behalf of
20 the person and compensation received in the same case or for the
21 same services from any other source.

22 Section 7. Determination and commitment.

23 (a) Determination.--The court or jury shall determine
24 whether, beyond a reasonable doubt, the person is a sexually
25 violent predator. If the determination that the person is a
26 sexually violent predator is made by a jury, the determination
27 shall be by unanimous verdict of the jury.

28 (b) Appeal.--The determination by the court or jury may be
29 appealed.

30 (c) Commitment.--If the court or jury determines that the

1 person is a sexually violent predator, the person shall be
2 committed to the custody of the Department of Public Welfare for
3 control, care and treatment until the person's mental
4 abnormality or personality disorder has so changed that the
5 person is safe to be at large. The control, care and treatment
6 shall be provided at a facility operated by the department
7 subject to the provisions of subsection (e). The person shall
8 not be held in a regional forensic unit at a State hospital. The
9 court shall provide written notice of the commitment to the
10 agency with jurisdiction which in turn shall, if applicable,
11 provide written notice to the agency or official who authorized
12 the person's parole.

13 (d) Secure facility.--At all times, persons committed for
14 control, care and treatment by the Department of Public Welfare
15 pursuant to this act shall be kept in a secure facility and
16 shall be segregated at all times from any other patient under
17 the supervision of the department. The Department of Public
18 Welfare shall be responsible for all costs relating to the
19 control, care and treatment of persons committed to the
20 department's custody pursuant to the provisions of this act.

21 (e) Interagency agreements.--The Department of Public
22 Welfare is authorized to enter into an interagency agreement
23 with the Department of Corrections for the confinement of
24 persons committed under this act. The persons who are in the
25 confinement of the Department of Corrections pursuant to an
26 interagency agreement shall be housed and managed separately
27 from offenders in the custody of the Department of Corrections
28 and, except for occasional instances of supervised incidental
29 contact, shall be segregated from the offenders.

30 (f) Release.--If the court or jury is not satisfied beyond a

1 reasonable doubt that the person is a sexually violent predator,
2 the court shall provide written notice to the agency with
3 jurisdiction which in turn shall, if applicable, provide written
4 notice to the agency or official who authorized the person's
5 parole, and the person's release or parole may proceed.

6 (g) Mistrial.--Upon a mistrial, the court shall direct that
7 the person be held at an appropriate secure facility, including,
8 but not limited to, a county jail, until another trial is
9 conducted. The person shall not be held at a regional forensic
10 unit at a State hospital. Any subsequent trial following a
11 mistrial shall be held within 90 days of the previous trial,
12 unless the subsequent trial is continued as provided for in
13 section 6(a).

14 Section 8. Incompetent to stand trial.

15 (a) Hearing.--If the person who has been charged with a
16 sexually violent offense has been found to be incompetent to
17 stand trial and is about to be released, and the person's
18 involuntary commitment is sought pursuant to this act, the court
19 shall first hear evidence and determine whether the person did
20 commit the act or acts charged. The hearing on this issue must
21 comply with all the procedures specified in sections 6 and 7.

22 (b) Evidence; constitutional rights.--The rules of evidence
23 applicable in criminal cases shall apply, and all constitutional
24 rights available to defendants at criminal trials, other than
25 the right not to be tried while incompetent, shall apply.

26 (c) Findings.--After hearing evidence on this issue, the
27 court shall make specific findings on whether the person did
28 commit the act or acts charged, the extent to which the person's
29 incompetence or developmental disability affected the outcome of
30 the hearing, including its effect on the person's ability to

1 consult with and assist counsel and to testify on the person's
2 own behalf, the extent to which the evidence could be
3 reconstructed without the assistance of the person and the
4 strength of the prosecution's case.

5 (d) Final order.--If after the conclusion of the hearing on
6 this issue the court finds beyond a reasonable doubt that the
7 person did commit the act or acts charged, the court shall enter
8 a final order, appealable by the person, on that issue and may
9 proceed to consider whether the person should be committed
10 pursuant to this act.

11 Section 9. Detention and commitment.

12 The involuntary detention and commitment of persons under
13 this act shall conform to constitutional requirements for
14 control, care and treatment.

15 Section 10. Annual examinations; procedure.

16 (a) Examination.--Each person committed under this act shall
17 have a current examination of the person's mental condition once
18 each year. The person may retain or, if the person is indigent
19 and so requests, the court may appoint a professionally
20 qualified expert in the field of sexual violence or abuse to
21 examine the person, and the expert shall have access to all
22 records concerning the person.

23 (b) Report to the court.--The yearly report shall be
24 provided to the court that committed the person under this act.
25 The court shall conduct an annual review of the status of the
26 committed person. Nothing contained in this act shall prohibit
27 the person from otherwise petitioning the court for release at
28 this hearing. The Department of Public Welfare shall provide the
29 committed person with an annual written notice of the person's
30 right to petition the court for release over the department's

1 objection. The notice shall contain a waiver of rights. The
2 Department of Public Welfare shall forward the notice and waiver
3 form to the court with the annual report.

4 (c) Counsel.--The committed person shall have the right to
5 have an attorney represent the person at the hearing, but the
6 committed person shall not have the right to be present at the
7 hearing.

8 (d) Probable cause.--If the court at the hearing determines
9 that probable cause exists to believe that the person's mental
10 abnormality or personality disorder has so changed that the
11 person is safe to be at large and will not engage in acts of
12 sexual violence if discharged, then the court shall set a
13 hearing on the issue.

14 (e) Hearing.--At the hearing, the committed person shall be
15 entitled to be present and entitled to the benefit of all
16 constitutional protections that were afforded the person at the
17 initial commitment proceeding. The prosecuting attorney shall
18 represent the Commonwealth and shall have the right to a jury
19 trial and to have the committed person evaluated by
20 professionally qualified experts in the field of sexual violence
21 or abuse. The committed person shall also have the right to have
22 professional experts in the field of sexual violence or abuse
23 evaluate the person on the person's behalf, and the court shall
24 appoint an expert if the person is indigent and requests an
25 appointment.

26 (f) Burden of proof.--The burden of proof at the hearing
27 shall be upon the prosecuting attorney to show beyond a
28 reasonable doubt that the committed person's mental abnormality
29 or personality disorder remains such that the person is not safe
30 to be at large and, if released, is likely to engage in acts of

1 sexual violence.

2 Section 11. Petition for release; procedure.

3 (a) Department authorization.--If the Department of Public
4 Welfare determines that the person's mental abnormality or
5 personality disorder has so changed that the person is not
6 likely to commit predatory acts of sexual violence if released,
7 the department shall authorize the person to petition the court
8 for release.

9 (b) Petition.--The petition shall be served upon the court
10 and the prosecuting attorney. The court, upon receipt of the
11 petition for release, shall order a hearing within 30 days.

12 (c) Hearing.--The prosecuting attorney shall represent the
13 Commonwealth and shall have the right to have the committed
14 person examined by a professionally qualified expert in the
15 field of sexual violence or abuse. The hearing shall be held
16 before a jury if demanded by either the committed person or the
17 prosecuting attorney.

18 (d) Burden of proof.--The burden of proof shall be upon the
19 prosecuting attorney to show beyond a reasonable doubt that the
20 committed person's mental abnormality or personality disorder
21 remains such that the person is not safe to be at large and, if
22 released, is likely to engage in acts of sexual violence.

23 (e) Subsequent petitions.--Nothing in this act shall
24 prohibit a person from filing a petition for release pursuant to
25 this act. However, if a person has previously filed a petition
26 for release and the court has determined either upon review of
27 the petition or following a hearing that the person's condition
28 had not changed so that the person was safe to be at large, then
29 the court shall deny the subsequent petition unless the petition
30 contains facts upon which the court could find the condition of

1 the person had so changed that a hearing was warranted. Upon
2 receipt of a petition from a committed person, the court shall
3 endeavor whenever possible to review the petition and determine
4 if the petition is based upon frivolous grounds and, if so,
5 shall deny the petition without a hearing.

6 (f) Notice to agency with jurisdiction.--If a person is
7 eligible for release from involuntary commitment pursuant to
8 section 10 or this section, the Department of Public Welfare
9 shall provide written notice to the agency with jurisdiction
10 which in turn shall, if applicable, provide written notice to
11 the agency or official who authorized the person's parole. If
12 within 30 days of the notice to the agency with jurisdiction or
13 the agency or official who authorized the person's parole does
14 not respond to the Department of Public Welfare with a written
15 notice objecting to the release, the department may proceed with
16 the person's release from involuntary commitment. If the agency
17 with jurisdiction or the agency or official who authorized the
18 person's parole does respond within 30 days objecting to the
19 person's release because the person has time remaining to serve
20 in confinement or on parole, the person shall be transferred to
21 the agency with jurisdiction to complete the sentence of
22 confinement or to be paroled.

23 (g) Notice to victims.--In addition to any other information
24 required to be released under this act, prior to the release of
25 a person committed under this act, the Department of Public
26 Welfare shall give written notice of the release to the Office
27 of Victim Advocate, which shall provide written notice under the
28 act of March 21, 1995 (1st Sp.Sess., P.L.980, No.8), known as
29 the Victim Advocate Law, to any victim of the person's
30 activities or crime who is alive and whose address is known to

1 the Pennsylvania Board of Probation and Parole's Office of
2 Victim Advocate or, if the victim is deceased, to the victim's
3 family if the family's address is known to the Office of Victim
4 Advocate. This notice requirement shall not apply to any victim
5 or victim's family that has notified the Office of Victim
6 Advocate that they do not wish to be notified of the release.
7 Failure to notify shall not be a reason for postponement of
8 release. Nothing in this subsection shall create a cause of
9 action against the Commonwealth or any employee of the
10 Commonwealth acting within the scope of the employee's
11 employment as a result of the failure to notify under this act.

12 Section 12. Records.

13 (a) Confidentiality.--In order to protect the public,
14 relevant information and records which are otherwise
15 confidential or privileged shall be released to the agency with
16 jurisdiction or, if different, to the Department of Corrections
17 or the prosecuting attorney for the purpose of meeting the
18 notice requirement of section 4 and determining whether a person
19 is or continues to be a sexually violent predator.

20 (b) Court order.--Any psychological reports, drug and
21 alcohol reports, treatment records, reports of the diagnostic
22 center, medical records or victim impact statements which have
23 been submitted to the court or admitted into evidence under this
24 act shall be part of the record but shall be sealed and opened
25 only on order of the court.

26 Section 13. Regulations.

27 The Department of Corrections, the Department of Public
28 Welfare and the Pennsylvania Board of Probation and Parole may
29 issue regulations necessary for the implementation of this act.

30 Section 14. Effective date.

1 This act shall take effect as follows:

2 (1) Section 13 and this section shall take effect
3 immediately.

4 (2) The remainder of this act shall take effect in 180
5 days.