

**Testimony Before the House Judiciary Committee's  
Task Force on Civil Commitments  
Regarding House Bill 1811**

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Good morning Chairman Masland and members of the House Judiciary Committee's Task Force on Civil Commitments. Thank you for providing me with the opportunity to provide comment on House Bill 1811; "The Sexually Violent Predators Act"

I firmly believe that this legislation - which provides for the civil commitment of the most dangerous sexually violent predators after they have completed their prison sentences - is a much needed tool to protect the public, especially children. This legislation offers us a solid crime prevention tool that will make our communities safer and will undoubtedly save lives. This is common-sense legislation which has been enacted by a number of states and is currently being pursued by dozens more. More significantly, this legislation has been affirmed by the U.S. Supreme Court.

Consider the case of Leroy Hendricks who was the focus of the United States Supreme Court decision on a Kansas law, which is similar to the legislation you are considering today. Hendricks had a nearly 40-year history of molesting young

children. Decade after decade, Hendricks was convicted, imprisoned and released only to prey upon more children, including his own stepdaughter and stepson. Finally in 1994, after Kansas enacted a law allowing for civil commitment of violent sexual predators, the state petitioned to have Hendricks civilly committed upon the expiration of his prison sentence.

During Hendricks' trial, the jury heard chilling testimony from Hendricks himself, including how he repeatedly abused children when he was not confined, and that he could not control his "urge" to molest children. Hendricks stated that the only sure way he could keep from molesting children in the future was "to die." The jury unanimously found, beyond a reasonable doubt, that Hendricks was a sexually violent predator and he was turned over to the control of the State Secretary of Social Rehabilitation Services.

The Kansas State Supreme Court overturned the jury's decision and the Attorney General of Kansas appealed to the United States Supreme Court, arguing that the State law did not violate Hendricks' constitutional rights. The Supreme Court agreed and upheld the statute finding that "The Liberty secured by the Constitution of the United States to every person within its jurisdiction does not

import an absolute right in each person to be at all times and in all circumstances, wholly free from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to all its members."

Given that a statute similar to the bill you are considering has been reviewed by the nation's highest court in the Hendricks case, we know that we are on solid constitutional ground. In fact, the procedure for placing dangerous sexual predators into the custody of the Department of Public Welfare requires a multi-step process - culminating in a hearing before a judge and possibly a jury. Let me explain.

- First, the legislation establishes a multi-disciplinary team comprised of mental health and criminal justice experts which will be responsible for reviewing the records of persons convicted of a sexually violent offense prior to their release from prison, as well as those who have been charged with a sexually violent offense but have been found incompetent to stand trial. If the multi-disciplinary team determines that the person meets the definition of a sexually violent predator, then the original prosecutor, whether the Attorney General's Office or a District Attorney, must be notified.

- The Attorney General or the District Attorney would then make a determination as to whether to file a petition with the court alleging that the person is a sexually violent predator. If a petition is filed, the court would hold an initial hearing, in which the offender, with counsel, may appear and call witnesses. The purpose of this hearing is to determine whether there is probable cause to believe that the person is a dangerous sexually violent predator.
- If the court finds probable cause, the person must be transferred to an appropriate secure facility for an evaluation to be preformed by a professionally qualified expert. The purpose of this evaluation is to determine whether a mental health professional considers the person a sexually violent predator.
- A trial must then be held within 60 days of the probable cause hearing to determine whether - beyond a reasonable doubt - that person is a sexually violent predator. The person or the Commonwealth has the right to ask for a jury trial. Indigent persons have the right to the appointment of counsel

throughout all stages of the proceedings.

- For trial purposes, a person has a right to have a professionally qualified expert in the field of sexual violence or abuse perform an examination on their behalf. Indigent persons may petition the court to have an evaluation done on their behalf at no cost.
- If the person is determined to be a sexually violent predator, the person must be transferred to the custody of the Department of Public Welfare for civil commitment. DPW must keep the patient in a secure facility and the patient must be segregated at all times from other patients under DPW's control.
- Additionally, individuals committed under the Act would be entitled to an annual review of their mental status. This review includes the right to have a professionally qualified expert examine the committed person. The expert's report must be provided to the court and the court must conduct a hearing on the mental status of the convicted person. If the court believes that the individual is no longer a threat to the community, the court must have a full hearing to determine if the person should be released. The prosecuting authority has the burden of showing - again, beyond a reasonable doubt - that

the person remains a threat and is not safe to be at large.

Finally, let me stress that this legislation not only seeks to prevent Pennsylvanians from becoming victims of sexually violent predators, but it also is sensitive to the needs of past victims and their families. Before a person can be released from civil commitment, the Department of Public Welfare would be required to notify the State's Victim Advocate of the upcoming release. The Victim Advocate, in turn, must notify the victim or victims in writing that the perpetrator is being released from civil commitment.

In closing, I want to congratulate Representative Oriole and all of the legislators who have been involved with bringing this legislation to the forefront. By enacting this important bill, we can make Pennsylvania a safer place for all of our citizens, but particularly for our children.