

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 245 Session of  
1999

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FEBRUARY 2, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 2, 1999

## 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  
16 highly likely to engage in repeat acts of predatory sexual

1 violence.

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

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

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

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

16 Section 3. Definitions.

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

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

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

30 "Predatory act." An act directed at a person for the primary

1 purpose of victimization.

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

7 "Sexually violent offense."

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

10 18 Pa.C.S. § 2901 (relating to kidnapping) except by  
11 a parent.

12 18 Pa.C.S. § 5902(a) (relating to prostitution and  
13 related offenses).

14 18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to  
15 obscene and other sexual materials and performances).

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

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

19 18 Pa.C.S. § 3123 (relating to involuntary deviate  
20 sexual intercourse).

21 18 Pa.C.S. § 3125 (relating to aggravated indecent  
22 assault).

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

25 18 Pa.C.S. § 3126 (relating to indecent assault).

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

1 disorder that makes the person likely to engage in predatory  
2 sexually violent offenses.

3 Section 4. Preliminary assessment and notice.

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

29 (b) Notice to be given to prosecuting attorney.--If the  
30 multidisciplinary team's preliminary assessment is that the

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

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

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

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

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

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

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

29 Section 5. Probable cause hearing.

30 (a) Petition.--Within 75 days after receiving notice from

1 the agency with jurisdiction, the prosecuting attorney may file  
2 a petition for civil commitment alleging that the person is a  
3 sexually violent predator and stating sufficient facts to  
4 support the allegation.

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

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

16 (1) To be represented by counsel.

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

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

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

22 (d) Transfer to appropriate facility.--If the court  
23 determines that there is probable cause, the court shall direct  
24 that the person be transferred to an appropriate secure  
25 facility, including, but not limited to, a county jail, for an  
26 evaluation as to whether the person is a sexually violent  
27 predator. The person shall not be held in a regional forensic  
28 unit at a State hospital. The evaluation shall be conducted by a  
29 professionally qualified expert in the field of sexual violence  
30 or abuse. In no event shall the person be released from

1 confinement prior to trial.

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

10 Section 6. Trial, counsel and examination.

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

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

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

30 (d) Examination.--Whenever any person is subjected to an

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

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

21 Section 7. Determination and commitment.

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

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

29 (c) Commitment.--If the court or jury determines that the  
30 person is a sexually violent predator, the person shall be



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

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

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

29 (f) Release.--If the court or jury is not satisfied beyond a  
30 reasonable doubt that the person is a sexually violent predator,

1 the court shall provide written notice to the agency with  
2 jurisdiction which in turn shall, if applicable, provide written  
3 notice to the agency or official who authorized the person's  
4 parole, and the person's release or parole may proceed.

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

13 Section 8. Incompetent to stand trial.

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

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

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

1 own behalf, the extent to which the evidence could be  
2 reconstructed without the assistance of the person and the  
3 strength of the prosecution's case.

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

10 Section 9. Detention and commitment.

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

14 Section 10. Annual examinations; procedure.

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

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

1 Department of Public Welfare shall forward the notice and waiver  
2 form to the court with the annual report.

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

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

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

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

1 Section 11. Petition for release; procedure.

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

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

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

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

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

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

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

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

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

11 Section 12. Records.

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

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

25 Section 13. Regulations.

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

29 Section 14. Effective date.

30 This act shall take effect as follows:

1           (1) Section 13 and this section shall take effect  
2 immediately.  
3           (2) The remainder of this act shall take effect in 180  
4 days.