
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 404 Session of
2003

INTRODUCED BY GREENLEAF, ORIE, SCHWARTZ, LEMMOND, RAFFERTY,
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MARCH 5, 2003

REFERRED TO JUDICIARY, MARCH 5, 2003

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
17 violence.

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

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

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

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

15 Section 3. Definitions.

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

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

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

29 "Predatory act." An act directed at a person for the primary
30 purpose of victimization.

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

6 "Sexually violent offense."

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

9 18 Pa.C.S. § 2901 (relating to kidnapping) except by
10 a parent.

11 18 Pa.C.S. § 5902(a) (relating to prostitution and
12 related offenses).

13 18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to
14 obscene and other sexual materials and performances).

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

17 18 Pa.C.S. § 3121 (relating to rape).

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

20 18 Pa.C.S. § 3125 (relating to aggravated indecent
21 assault).

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

24 18 Pa.C.S. § 3126 (relating to indecent assault).

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

30 (1) a mental abnormality or personality disorder that

1 makes the person likely to engage in predatory sexually
2 violent offenses; and

3 (2) an inability or serious difficulty in controlling
4 behavior.

5 Section 4. Preliminary assessment and notice.

6 (a) Preliminary assessment by multidisciplinary team.--

7 (1) The Department of Corrections shall establish a
8 multidisciplinary team of criminal justice and mental health
9 experts, including persons expert in the field of sexual
10 violence or abuse, that shall review available records of
11 each person eligible for release who has been convicted of a
12 sexually violent offense or who has been charged with a
13 sexually violent offense but found to be incompetent to stand
14 trial. If the agency with jurisdiction is not the Department
15 of Corrections, the agency with jurisdiction shall provide
16 the department with the records which are necessary for the
17 review by the multidisciplinary team.

18 (2) The multidisciplinary team shall make a preliminary
19 assessment of whether or not the person meets the definition
20 of a sexually violent predator. The multidisciplinary team
21 shall review the records and make the preliminary assessment
22 no earlier than 120 days prior to release. The
23 multidisciplinary team shall notify the Department of
24 Corrections in writing of its preliminary assessment. If the
25 agency with jurisdiction is not the Department of
26 Corrections, the department shall forward the
27 multidisciplinary team's preliminary assessment to the agency
28 with jurisdiction, and the agency with jurisdiction shall
29 reimburse the department for its use of the multidisciplinary
30 team.

1 (3) For purposes of this subsection, the term "eligible
2 for release" means that the person is near the end of his
3 maximum sentence or has been granted parole.

4 (b) Notice to be given to prosecuting attorney.--If the
5 multidisciplinary team's preliminary assessment is that the
6 person meets the definition of a sexually violent predator, the
7 agency with jurisdiction shall give written notice of the
8 preliminary assessment to the prosecuting attorney 90 days prior
9 to:

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

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

19 (c) Information to be provided to prosecuting attorney.--The
20 agency with jurisdiction shall provide the prosecuting attorney
21 with the following information:

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

24 (2) Documentation of institutional adjustment and any
25 treatment received.

26 (d) Notice to authorizing agency or official.--At the same
27 time that the agency with jurisdiction gives notice to the
28 prosecuting attorney, the agency with jurisdiction shall, if
29 applicable, provide written notice to the agency or official who
30 authorized the person's parole. This notice shall serve to

1 suspend the parole authorization until any proceedings under
2 this act have been concluded, including any period of
3 involuntary commitment.

4 Section 5. Probable cause hearing.

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

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

14 (c) Hearing.--

15 (1) At the probable cause hearing, the court shall
16 verify the person's identity and determine whether probable
17 cause exists to believe that the person is a sexually violent
18 predator. The prosecuting attorney may rely upon the petition
19 and supplement the petition with additional documentary
20 evidence or live testimony.

21 (2) The person shall have the following rights in
22 addition to rights specified in this act:

23 (i) To be represented by counsel.

24 (ii) To present evidence on the person's behalf.

25 (iii) To cross-examine witnesses who testify against
26 the person.

27 (iv) To view and copy all petitions and reports in
28 the court file.

29 (d) Transfer to appropriate facility.--

30 (1) If the court determines that there is probable

1 cause, the court shall direct that the person be transferred
2 to an appropriate secure facility, including, but not limited
3 to, a county jail, for an evaluation as to whether the person
4 is a sexually violent predator. The person shall not be held
5 in a regional forensic unit at a State hospital.

6 (2) The evaluation shall be conducted by a
7 professionally qualified expert in the field of sexual
8 violence or abuse.

9 (3) In no event shall the person be released from
10 confinement prior to trial.

11 (e) Notice to agency with jurisdiction.--If the prosecuting
12 attorney chooses not to file a petition pursuant to subsection
13 (a) or, following the hearing, if the court finds that probable
14 cause does not exist, the prosecuting attorney shall provide
15 written notice of the decision to the agency with jurisdiction
16 which, in turn, shall, if applicable, provide written notice to
17 the agency or official who authorized parole, and the person's
18 release or parole may proceed.

19 Section 6. Trial, counsel and examination.

20 (a) Time of trial.--Within 60 days after the completion of
21 the probable cause hearing, the court shall conduct a trial to
22 determine whether the person is a sexually violent predator. The
23 trial may be continued:

24 (1) upon the request of either party and a showing of
25 good cause; or

26 (2) by the court on its own motion in the due
27 administration of justice and when the person who is the
28 subject of the proceeding will not be substantially
29 prejudiced.

30 (b) Jury trial.--The person who is the subject of the

1 proceeding or the prosecuting attorney shall have the right to
2 demand that the trial be before a jury. The demand for the trial
3 to be before a jury shall be filed in writing at least four days
4 prior to trial. The number and selection of jurors shall be as
5 provided by law for civil cases and the Pennsylvania Rules of
6 Civil Procedure. If no demand is made, the trial shall be held
7 before the judge.

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

12 (d) Examination.--

13 (1) Whenever any person is subjected to an examination
14 under this act, the person may retain professionally
15 qualified experts in the field of sexual violence or abuse to
16 perform an examination of the person on the person's behalf.

17 (2) When the person wishes to be examined by a qualified
18 expert of the person's own choice, the examiner shall be
19 permitted to have reasonable access to the person for the
20 purpose of the examination, as well as to relevant medical
21 and psychological records and reports.

22 (e) Indigent persons.--

23 (1) In the case of a person who is indigent, the court,
24 upon the person's request, shall determine whether the
25 services are necessary and reasonable compensation for the
26 services. The court shall assist the person in obtaining a
27 professionally qualified expert in the field of sexual
28 violence or abuse to perform an examination or participate in
29 the trial on the person's behalf.

30 (2) The court shall approve payment for the services

1 upon the filing of a certified claim for compensation
2 supported by a written statement specifying the time
3 expended, services rendered, expenses incurred on behalf of
4 the person and compensation received in the same case or for
5 the same services from any other source.

6 Section 7. Determination and commitment.

7 (a) Determination.--The court or jury shall determine
8 whether, beyond a reasonable doubt, the person is a sexually
9 violent predator. If the determination that the person is a
10 sexually violent predator is made by a jury, the determination
11 shall be by unanimous verdict of the jury.

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

14 (c) Commitment.--

15 (1) If the court or jury determines that the person is a
16 sexually violent predator, the person shall be committed to
17 the custody of the Department of Public Welfare for control,
18 care and treatment until the person's mental abnormality or
19 personality disorder has so changed that the person is safe
20 to be at large. The control, care and treatment shall be
21 provided at a facility operated by the department subject to
22 the provisions of subsection (e). The person shall not be
23 held in a regional forensic unit at a State hospital.

24 (2) The court shall provide written notice of the
25 commitment to the agency with jurisdiction which in turn
26 shall, if applicable, provide written notice to the agency or
27 official who authorized the person's parole.

28 (d) Secure facility.--

29 (1) At all times, persons committed for control, care
30 and treatment by the Department of Public Welfare pursuant to

1 this act shall be kept in a secure facility and shall be
2 segregated at all times from any other patient under the
3 supervision of the department.

4 (2) The Department of Public Welfare shall be
5 responsible for all costs relating to the control, care and
6 treatment of persons committed to the department's custody
7 pursuant to the provisions of this act.

8 (e) Interagency agreement.--

9 (1) The Department of Public Welfare may enter into an
10 interagency agreement with the Department of Corrections for
11 the confinement of persons committed under this act.

12 (2) The persons who are in the confinement of the
13 Department of Corrections pursuant to an interagency
14 agreement shall be housed and managed separately from
15 offenders in the custody of the Department of Corrections
16 and, except for occasional instances of supervised incidental
17 contact, shall be segregated from the offenders.

18 (f) Release.--If the court or jury is not satisfied beyond a
19 reasonable doubt that the person is a sexually violent predator,
20 the court shall provide written notice to the agency with
21 jurisdiction which in turn shall, if applicable, provide written
22 notice to the agency or official who authorized the person's
23 parole, and the person's release or parole may proceed.

24 (g) Mistrial.--

25 (1) Upon a mistrial, the court shall direct that the
26 person be held at an appropriate secure facility, including,
27 but not limited to, a county jail, until another trial is
28 conducted. The person shall not be held at a regional
29 forensic unit at a State hospital.

30 (2) Any subsequent trial following a mistrial shall be

1 held within 90 days of the previous trial, unless the
2 subsequent trial is continued as provided for in section
3 6(a).

4 Section 8. Incompetent to stand trial.

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

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

16 (c) Findings.--After hearing evidence on this issue, the
17 court shall make specific findings:

18 (1) On whether the person committed the act or acts
19 charged.

20 (2) The extent to which the person's incompetence or
21 developmental disability affected the outcome of the hearing,
22 including its effect on the person's ability to consult with
23 and assist counsel and to testify on the person's own behalf.

24 (3) The extent to which the evidence could be
25 reconstructed without the assistance of the person.

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

27 (d) Final order.--If after the conclusion of the hearing on
28 this issue the court finds beyond a reasonable doubt that the
29 person committed the act or acts charged, the court shall enter
30 a final order, appealable by the person, on that issue and may

1 proceed to consider whether the person should be committed
2 pursuant to this act.

3 Section 9. Detention and commitment.

4 The involuntary detention and commitment of persons under
5 this act shall conform to constitutional requirements for
6 control, care and treatment.

7 Section 10. Annual examinations; procedure.

8 (a) Examination.--

9 (1) Each person committed under this act shall have a
10 current examination of the person's mental condition once
11 each year.

12 (2) The person may retain or, if the person is indigent
13 and so requests, the court may appoint a professionally
14 qualified expert in the field of sexual violence or abuse to
15 examine the person, and the expert shall have access to all
16 records concerning the person.

17 (b) Report to the court.--

18 (1) The yearly report shall be provided to the court
19 that committed the person under this act. The court shall
20 conduct an annual review of the status of the committed
21 person. Nothing contained in this act shall prohibit the
22 person from otherwise petitioning the court for release at
23 this hearing.

24 (2) The Department of Public Welfare shall provide the
25 committed person with an annual written notice of the
26 person's right to petition the court for release over the
27 department's objection. The notice shall contain a waiver of
28 rights. The Department of Public Welfare shall forward the
29 notice and waiver form to the court with the annual report.

30 (c) Counsel.--The committed person shall have the right to

1 have an attorney represent the person at the hearing, but the
2 committed person shall not have the right to be present at the
3 hearing.

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

10 (e) Hearing.--

11 (1) At the hearing, the committed person shall be
12 entitled to be present and entitled to the benefit of all
13 constitutional protections that were afforded the person at
14 the initial commitment proceeding.

15 (2) The prosecuting attorney shall represent the
16 Commonwealth and shall have the right to a jury trial and to
17 have the committed person evaluated by professionally
18 qualified experts in the field of sexual violence or abuse.

19 (3) The committed person shall have the right to have
20 professional experts in the field of sexual violence or abuse
21 evaluate the person on the person's behalf, and the court
22 shall appoint an expert if the person is indigent and
23 requests an appointment.

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

30 Section 11. Petition for release and procedure.

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

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

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

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

21 (e) Subsequent petitions.--

22 (1) Except as otherwise provided for in paragraph (2),
23 nothing in this act shall prohibit a person from filing a
24 petition for release pursuant to this act.

25 (2) If a person has previously filed a petition for
26 release and the court has determined either upon review of
27 the petition or following a hearing that the person's
28 condition had not changed so that the person was safe to be
29 at large, then the court shall deny the subsequent petition
30 unless the petition contains facts upon which the court could

1 find the condition of the person had so changed that a
2 hearing was warranted.

3 (3) Upon receipt of a petition from a committed person,
4 the court shall endeavor whenever possible to review the
5 petition and determine if the petition is based upon
6 frivolous grounds and, if so, shall deny the petition without
7 a hearing.

8 (f) Notice to agency with jurisdiction.--

9 (1) If a person is eligible for release from involuntary
10 commitment pursuant to section 10 or this section, the
11 Department of Public Welfare shall provide written notice to
12 the agency with jurisdiction which in turn shall, if
13 applicable, provide written notice to the agency or official
14 who authorized the person's parole.

15 (2) If within 30 days of the notice to the agency with
16 jurisdiction or the agency or official who authorized the
17 person's parole does not respond to the Department of Public
18 Welfare with a written notice objecting to the release, the
19 department may proceed with the person's release from
20 involuntary commitment.

21 (3) If the agency with jurisdiction or the agency or
22 official who authorized the person's parole does respond
23 within 30 days objecting to the person's release because the
24 person has time remaining to serve in confinement or on
25 parole, the person shall be transferred to the agency with
26 jurisdiction to complete the sentence of confinement or to be
27 paroled.

28 (g) Notice to victims.--

29 (1) In addition to any other information required to be
30 released under this act, prior to the release of a person

1 committed under this act, the Department of Public Welfare
2 shall give written notice of the release to the Office of
3 Victim Advocate, which shall provide written notice under the
4 act of March 21, 1995 (1st Sp.Sess., P.L.980, No.8), known as
5 the Victim Advocate Law, to any victim of the person's
6 activities or crime who is alive and whose address is known
7 to the Pennsylvania Board of Probation and Parole's Office of
8 Victim Advocate or, if the victim is deceased, to the
9 victim's family if the family's address is known to the
10 Office of Victim Advocate.

11 (2) The notice required by this section shall not apply
12 to any victim or victim's family that has notified the Office
13 of Victim Advocate that they do not wish to be notified of
14 the release. Failure to notify shall not be a reason for
15 postponement of release.

16 (3) Nothing in this subsection shall be construed as
17 establishing a cause of action against the Commonwealth or
18 any employee of the Commonwealth acting within the scope of
19 the employee's employment as a result of the failure to
20 notify under this act.

21 Section 12. Records.

22 (a) Confidentiality.--In order to protect the public,
23 relevant information and records which are otherwise
24 confidential or privileged shall be released to the agency with
25 jurisdiction or, if different, to the Department of Corrections
26 or the prosecuting attorney for the purpose of meeting the
27 notice requirement of section 4 and determining whether a person
28 is or continues to be a sexually violent predator.

29 (b) Court order.--Any psychological reports, drug and
30 alcohol reports, treatment records, reports of the diagnostic

1 center, medical records or victim impact statements which have
2 been submitted to the court or admitted into evidence under this
3 act shall be part of the record but shall be sealed and opened
4 only on order of the court.

5 Section 13. Regulations.

6 The Department of Corrections, the Department of Public
7 Welfare and the Pennsylvania Board of Probation and Parole may
8 issue regulations necessary for the implementation of this act.

9 Section 14. Effective date.

10 This act shall take effect as follows:

11 (1) Section 13 and this section shall take effect
12 immediately.

13 (2) The remainder of this act shall take effect in 180
14 days.