
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 524 Session of
2007

INTRODUCED BY ORIE, FONTANA, PICCOLA, RAFFERTY, BOSCOLA, LOGAN
AND BROWNE, MARCH 19, 2007

REFERRED TO JUDICIARY, MARCH 19, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, establishing a civil
3 procedure for the involuntary outpatient commitment of
4 certain sexually violent predators with the installation of a
5 permanent tracking device upon their person.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 42 of the Pennsylvania Consolidated
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 64A

11 ADULT SEXUALLY VIOLENT PREDATORS

12 Sec.

13 6401A. Short title.

14 6402A. Legislative findings.

15 6403A. Definitions.

16 6404A. Preliminary assessment and notice.

17 6405A. Probable cause hearing.

18 6406A. Trial, counsel and examination.

19 6407A. Determination and outpatient civil commitment.

- 1 6408A. Incompetent to stand trial.
- 2 6409A. Annual examinations; procedure.
- 3 6410A. Petition for release and procedure.
- 4 6411A. Records.
- 5 6412A. Immunity for good faith conduct.
- 6 6413A. Regulations.
- 7 § 6401A. Short title.

8 This chapter shall be known and may be cited as the Sexually
9 Violent Predators Act.

10 § 6402A. Legislative findings.

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

15 (1) Sexually violent predators generally have
16 personality features which are not amenable to existing
17 mental illness treatment modalities, and those features
18 render them highly likely to engage in repeat acts of
19 predatory sexual violence.

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

25 (3) The treatment modalities for sexually violent
26 predators are very different from the traditional modalities
27 for people appropriate for commitment under the Mental Health
28 Procedures Act.

29 (4) The involuntary commitment procedure provided for in
30 the Mental Health Procedures Act is inadequate to address the

1 risks sexually violent predators pose to society.

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

4 § 6403A. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Agency with jurisdiction." An agency which releases upon
9 lawful order or authority a person who is serving a sentence or
10 term of confinement, or is otherwise being detained. This term
11 includes the Department of Corrections or a county correctional
12 facility.

13 "Mental abnormality." A congenital or acquired condition of
14 a person that affects the emotional or volitional capacity of
15 the person in a manner that predisposes that person to the
16 commission of criminal sexual acts to a degree that makes the
17 person a menace to the health and safety of other persons.

18 "Predatory act." An act directed at a person for the primary
19 purpose of victimization.

20 "Prosecuting attorney." The district attorney of a county
21 which prosecutes a case or the Attorney General, if either the
22 Attorney General originally prosecutes a case or agrees to
23 handle a proceeding under this act at the request of the
24 district attorney.

25 "Sexually violent offense."

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

28 18 Pa.C.S. § 2901 (relating to kidnapping) except by
29 a parent.

30 18 Pa.C.S. § 5902(a) (relating to prostitution and

1 related offenses).

2 18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to
3 obscene and other sexual materials and performances).

4 (2) Any of the following offenses regardless of the age
5 of the victim:

6 18 Pa.C.S. § 3121 (relating to rape).

7 18 Pa.C.S. § 3123 (relating to involuntary deviate
8 sexual intercourse).

9 18 Pa.C.S. § 3125 (relating to aggravated indecent
10 assault).

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

13 18 Pa.C.S. § 3126 (relating to indecent assault).

14 "Sexually violent predator." A person who has been convicted
15 of a sexually violent offense or who has been charged with a
16 sexually violent offense but found to be incompetent to stand
17 trial and who is determined to be a sexually violent predator
18 under this act because of:

19 (1) a mental abnormality or personality disorder that
20 makes the person likely to engage in predatory sexually
21 violent offenses; and

22 (2) an inability or serious difficulty in controlling
23 behavior.

24 "Tracking service." An electronic monitoring service, global
25 positioning satellite service or other appropriate technological
26 service that is designed to monitor a person's physical location
27 24 hours a day, 7 days a week.

28 § 6404A. Preliminary assessment and notice.

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

30 (1) The Department of Corrections shall establish a

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

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

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

27 (b) Notice to be given to prosecuting attorney.--If the
28 multidisciplinary team's preliminary assessment is that the
29 person meets the definition of a sexually violent predator, the
30 agency with jurisdiction shall give written notice of the

1 preliminary assessment to the prosecuting attorney 90 days prior
2 to:

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

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

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

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

17 (2) Documentation of institutional adjustment and any
18 treatment received.

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

27 § 6405A. Probable cause hearing.

28 (a) Petition.--Within 75 days after receiving notice from
29 the agency with jurisdiction, the prosecuting attorney may file
30 a petition for civil commitment alleging that the person is a

1 sexually violent predator and stating sufficient facts to
2 support the allegation.

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

7 (c) Hearing.--

8 (1) At the probable cause hearing, the court shall
9 verify the person's identity and determine whether probable
10 cause exists to believe that the person is a sexually violent
11 predator. The prosecuting attorney may rely upon the petition
12 and supplement the petition with additional documentary
13 evidence or live testimony.

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

16 (i) To be represented by counsel.

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

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

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

22 (d) Transfer to appropriate facility.--

23 (1) If the court determines that there is probable
24 cause, the court shall direct that the person be transferred
25 to an appropriate secure facility, including, but not limited
26 to, a county jail, for an evaluation as to whether the person
27 is a sexually violent predator. The person shall not be held
28 in a regional forensic unit at a State hospital.

29 (2) The evaluation shall be conducted by a
30 professionally qualified expert in the field of sexual

1 violence or abuse.

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

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

12 § 6406A. Trial, counsel and examination.

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

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

19 (2) by the court on its own motion in the due
20 administration of justice and when the person who is the
21 subject of the proceeding will not be substantially
22 prejudiced.

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

1 (c) Counsel.--At all stages of the proceedings under this
2 chapter, any person who is subject to this chapter shall be
3 entitled to the assistance of counsel and, if the person is
4 indigent, the court shall appoint counsel to assist the person.

5 (d) Examination.--

6 (1) Whenever any person is subjected to an examination
7 under this chapter, the person may retain professionally
8 qualified experts in the field of sexual violence or abuse to
9 perform an examination of the person on the person's behalf.

10 (2) When the person wishes to be examined by a qualified
11 expert of the person's own choice, the examiner shall be
12 permitted to have reasonable access to the person for the
13 purpose of the examination as well as to relevant medical and
14 psychological records and reports.

15 (e) Indigent persons.--

16 (1) In the case of a person who is indigent, the court,
17 upon the person's request, shall determine whether the
18 services are necessary and reasonable compensation for the
19 services. The court shall assist the person in obtaining a
20 professionally qualified expert in the field of sexual
21 violence or abuse to perform an examination or participate in
22 the trial on the person's behalf.

23 (2) The court shall approve payment for the services
24 upon the filing of a certified claim for compensation
25 supported by a written statement specifying the time
26 expended, services rendered, expenses incurred on behalf of
27 the person and compensation received in the same case or for
28 the same services from any other source.

29 § 6407A. Determination and outpatient civil commitment.

30 (a) Determination.--The court or jury shall determine

1 whether, beyond a reasonable doubt, the person is a sexually
2 violent predator. If the determination that the person is a
3 sexually violent predator is made by a jury, the determination
4 shall be by unanimous verdict of the jury.

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

7 (c) Outpatient civil commitment.--

8 (1) If the court or jury determines that the person is a
9 sexually violent predator, the person shall be committed for
10 outpatient treatment and supervision to be coordinated by the
11 Department of Public Welfare until the person's mental
12 abnormality or personality disorder has so changed that the
13 person is safe to be at large. The commitment order shall be
14 effective immediately upon entry of the order, except that
15 the outpatient treatment and supervision shall begin on the
16 person's parole or release date from a secure correctional
17 facility or discharge from a State hospital.

18 (2) The court shall provide written notice of the
19 outpatient commitment to the agency with jurisdiction which
20 in turn shall, if applicable, provide written notice to the
21 agency or official who authorized the person's parole or
22 release.

23 (d) Outpatient commitment requirements.--

24 (1) Before entering an order directing a person's
25 outpatient civil commitment, the judge shall impose on the
26 person requirements necessary to ensure the person's
27 compliance with treatment and supervision and to protect the
28 community. The requirements shall include:

29 (i) Requiring the person to reside in a particular
30 location.

1 (ii) Prohibiting the person from contacting a former
2 victim or any potential future victim.

3 (iii) Prohibiting the person from using alcohol,
4 inhalants or any type of controlled substance, except as
5 prescribed by a physician after notice to and the consent
6 of the Department of Public Welfare.

7 (iv) Requiring the person to participate in and
8 comply with a specific course of treatment.

9 (v) Requiring the person to:

10 (A) Submit to 24-hour-per-day, 7-day-per-week
11 monitored tracking of the location of his physical
12 person under a particular type of tracking service
13 and to any other additional supervision deemed
14 appropriate by the Department of Public Welfare.

15 (B) Refrain from tampering with, altering,
16 modifying, obstructing or manipulating the tracking
17 device by any means or method.

18 (vi) Prohibiting the person from changing his
19 residence or moving out of the Commonwealth without prior
20 authorization from the judge.

21 (vii) If determined appropriate by the judge,
22 establishing a child safety zone around the residence of
23 the person, according to procedures developed by the
24 Department of Public Welfare, in consultation with the
25 Pennsylvania State Police or local police agency with
26 jurisdiction within the municipality in which the person
27 resides.

28 (viii) Requiring the person to notify his case
29 manager within the Department of Public Welfare within 24
30 hours of any change in his status which affects the plan

1 for his treatment and supervision, including a change in
2 his physical health or job status, and including his
3 incarceration.

4 (ix) Any other requirements determined by the judge
5 to be material, pertinent and necessary.

6 (2) The Department of Public Welfare shall be
7 responsible for all costs relating to the treatment and
8 supervision of persons committed pursuant to the provisions
9 of this act.

10 (e) Release.--If the court or jury is not satisfied beyond a
11 reasonable doubt that the person is a sexually violent predator,
12 the court shall provide written notice to the agency with
13 jurisdiction which in turn shall, if applicable, provide written
14 notice to the agency or official who authorized the person's
15 parole, and the person's release or parole may proceed.

16 (f) Mistrial.--

17 (1) Upon a mistrial, the court shall direct that the
18 person be held at an appropriate secure facility, including,
19 but not limited to, a county jail, until another trial is
20 conducted. The person shall not be held at a regional
21 forensic unit at a State hospital.

22 (2) Any subsequent trial following a mistrial shall be
23 held within 90 days of the previous trial unless the
24 subsequent trial is continued as provided for in section
25 6406A (relating to trial, counsel and examination).

26 § 6408A. Incompetent to stand trial.

27 (a) Hearing.--If the person who has been charged with a
28 sexually violent offense has been found to be incompetent to
29 stand trial and is about to be released and the person's
30 involuntary outpatient commitment is sought pursuant to this

1 chapter, the court shall first hear evidence and determine
2 whether the person did commit the act or acts charged. The
3 hearing on this issue must comply with all procedures specified
4 in sections 6406A (relating to trial, counsel and examination)
5 and 6407A (relating to determination and outpatient civil
6 commitment).

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

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

13 (1) On whether the person committed the act or acts
14 charged.

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

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

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

22 (d) Final order.--If after the conclusion of the hearing on
23 this issue the court finds beyond a reasonable doubt that the
24 person committed the act or acts charged, the court shall enter
25 a final order, appealable by the person, on that issue and may
26 proceed to consider whether the person should be committed
27 pursuant to this act.

28 § 6409A. Annual examinations; procedure.

29 (a) Examination.--

30 (1) Each person committed for treatment and supervision

1 under this act shall be entitled to an examination of the
2 person's mental condition once each year.

3 (2) The person may retain or, if the person is indigent
4 and so requests, the court may appoint a professionally
5 qualified expert in the field of sexual violence or abuse to
6 examine the person, and the expert shall have access to all
7 records concerning the person.

8 (b) Report to court.--

9 (1) The yearly examination report under subsection (a)
10 shall be provided to the court that committed the person
11 under this chapter. The court shall conduct an annual review
12 of the status of the committed person within 60 days of its
13 receipt of the report. Nothing contained in this chapter
14 shall prohibit the person from otherwise petitioning the
15 court for release at that time.

16 (2) The Department of Public Welfare shall provide the
17 committed person with an annual written notice of the
18 person's right to petition the court for release despite the
19 department's objection, if any. The notice shall contain a
20 waiver of rights. The Department of Public Welfare shall
21 forward the notice and waiver form to the court with the
22 annual report.

23 (c) Counsel.--The committed person shall have the right to
24 have an attorney represent the person at the court's review of
25 the annual report under subsection (b), but the committed person
26 shall not have the right to be present at the review.

27 (d) Probable cause.--If the court after its review under
28 subsection (b) determines that probable cause exists to believe
29 that the person's mental abnormality or personality disorder has
30 so changed that the person is safe to be at large and will not

1 engage in acts of sexual violence if released from the terms and
2 conditions of his outpatient commitment and supervision, then
3 the court shall set a hearing on the issue.

4 (e) Hearing.--

5 (1) At the hearing, the committed person shall be
6 entitled to be present and entitled to the benefit of all
7 constitutional protections that were afforded the person at
8 the initial commitment proceeding.

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

13 (3) The committed person shall have the right to have
14 professional experts in the field of sexual violence or abuse
15 evaluate the person on the person's behalf, and the court
16 shall appoint an expert if the person is indigent and
17 requests an appointment.

18 (f) Burden of proof.--The burden of proof at the hearing
19 shall be upon the prosecuting attorney to show beyond a
20 reasonable doubt that the committed person's mental abnormality
21 or personality disorder remains such that the person is not safe
22 to be at large without further treatment and supervision and is
23 likely to engage in acts of sexual violence.

24 § 6410A. Petition for release and procedure.

25 (a) Department authorization.--If the Department of Public
26 Welfare determines that the person's mental abnormality or
27 personality disorder has so changed that the person is not
28 likely to commit predatory acts of sexual violence if released
29 from the terms of monitored treatment and supervision, the
30 department shall authorize the person to petition the court for

1 release.

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

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

11 (d) Burden of proof.--The burden of proof shall be upon the
12 prosecuting attorney to show beyond a reasonable doubt that the
13 committed person's mental abnormality or personality disorder
14 remains such that the person is not safe to be at large without
15 continuing the terms of treatment and supervision and, if
16 released, is likely to engage in acts of sexual violence.

17 (e) Subsequent petitions.--

18 (1) Except as otherwise provided for in paragraph (2),
19 nothing in this act shall prohibit a person from filing a
20 petition for release pursuant to this chapter.

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

29 (3) Upon receipt of a petition from a committed person,
30 the court shall endeavor whenever possible to review the

1 petition and determine if the petition is based upon
2 frivolous grounds and, if so, shall deny the petition without
3 a hearing.

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

5 (1) If a person is eligible for release from involuntary
6 outpatient commitment pursuant to section 6409A or this
7 section, the Department of Public Welfare shall provide
8 written notice to the agency with jurisdiction which in turn
9 shall, if applicable, provide written notice to the agency or
10 official who authorized the person's parole.

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

17 (g) Notice to victims.--

18 (1) In addition to any other information required to be
19 released under this chapter, prior to the release of a person
20 committed to outpatient treatment and supervision under this
21 chapter, the Department of Public Welfare shall give written
22 notice of the release to the Office of Victim Advocate, which
23 shall provide written notice under the act of November 24,
24 1998 (P.L.882, No.111), known as the Crime Victims Act, to
25 any victim of the person's activities or crime who is alive
26 and whose address is known to the Pennsylvania Board of
27 Probation and Parole's Office of Victim Advocate or, if the
28 victim is deceased, to the victim's family if the family's
29 address is known to the Office of Victim Advocate.

30 (2) The notice required by this section shall not apply

1 to any victim or victim's family that has notified the Office
2 of Victim Advocate that they do not wish to be notified of
3 the release. Failure to notify shall not be a reason for
4 postponement of release.

5 (3) Nothing in this subsection shall be construed as
6 establishing a cause of action against the Commonwealth or
7 any employee of the Commonwealth acting within the scope of
8 the employee's employment as a result of the failure to
9 notify under this chapter.

10 § 6411A. Records.

11 (a) Confidentiality.--In order to protect the public,
12 relevant information and records which are otherwise
13 confidential or privileged shall be released to the agency with
14 jurisdiction or, if different, to the Department of Corrections
15 or the prosecuting attorney for the purpose of meeting the
16 notice requirement of section 6404A (relating to preliminary
17 assessment and notice) and determining whether a person is or
18 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 chapter shall be part of the record but shall be sealed and
24 opened only on order of the court.

25 § 6412A. Immunity for good faith conduct.

26 The following persons and entities shall be immune from
27 liability for good faith conduct under this chapter:

28 (1) An agency with jurisdiction and its agents and its
29 employees.

30 (2) The Department of Public Welfare and its agents and

1 employees.

2 (3) Prosecuting attorneys and their agents and
3 employees.

4 (4) Experts and professionals who provide examinations,
5 evaluations or other services under the provisions of this
6 chapter.

7 § 6413A. Regulations.

8 The Department of Corrections, the Department of Public
9 Welfare and the Pennsylvania Board of Probation and Parole shall
10 issue regulations necessary for the implementation of this
11 chapter.

12 Section 2. This act shall take effect as follows:

13 (1) The addition of 42 Pa.C.S. § 6413A shall take effect
14 immediately.

15 (2) This section shall take effect immediately.

16 (3) The remainder of this act shall take effect in 180
17 days.