

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1272 Session of
2008

INTRODUCED BY GREENLEAF, STOUT, ORIE, WOZNIAK, O'PAKE, BOSCOLA,
KITCHEN AND WASHINGTON, FEBRUARY 4, 2008

REFERRED TO JUDICIARY, FEBRUARY 4, 2008

AN ACT

1 Establishing a civil procedure for the involuntary commitment of
2 sexually dangerous persons; and providing for the powers and
3 duties of the State Sexual Offenders Assessment Board, the
4 Department of Corrections and the Department of Public
5 Welfare.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Sexually
10 Dangerous Persons Involuntary Commitment Act.

11 Section 2. Legislative findings.

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

16 (1) Sexually dangerous persons generally have
17 personality features which are unamenable to existing mental
18 illness treatment modalities, and those features render them
19 likely to engage in repeat acts of predatory sexual violence.

1 (2) Sexually dangerous persons 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 dangerous
7 persons 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 dangerous persons pose to society.

13 (5) The prognosis for rehabilitating sexually dangerous
14 persons within the terms of incarceration 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 who is otherwise being detained. This
22 term includes the Department of Corrections or a county
23 correctional facility.

24 "Board." The State Sexual Offenders Assessment Board.

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

7 "Sexually dangerous person." A person who has been convicted
8 of a sexually violent offense or who has been charged with a
9 sexually violent offense but found to be incompetent to stand
10 trial and who is determined to be a sexually dangerous person
11 under this act because of:

12 (1) a mental abnormality or personality disorder that
13 makes the person likely to engage in predatory sexually
14 violent offenses; and

15 (2) an inability, serious difficulty or intentional
16 disregard in controlling behavior.

17 "Sexually violent offense." An offense for which
18 registration is required under 42 Pa.C.S. § 9795.1 (relating to
19 registration).

20 Section 4. Preliminary evaluation and notice.

21 (a) Preliminary evaluation by multidisciplinary team.--

22 (1) The Department of Corrections shall establish a
23 multidisciplinary team of criminal justice and mental health
24 experts, including persons expert in the field of sexual
25 violence or abuse, that shall review available records of
26 each person reaching his maximum incarceration who has been
27 convicted of a sexually violent offense or who has been
28 charged with a sexually violent offense but found to be
29 incompetent to stand trial. If the agency with jurisdiction
30 is not the Department of Corrections, the agency with

1 jurisdiction shall provide the department with the records
2 which are necessary for the review by the multidisciplinary
3 team.

4 (2) The multidisciplinary team shall make a preliminary
5 evaluation of whether the person is a sexually dangerous
6 person. The multidisciplinary team shall review the records
7 and make the preliminary evaluation no later than 240 days
8 prior to release. The multidisciplinary team shall notify the
9 Department of Corrections in writing of its preliminary
10 evaluation. If the agency with jurisdiction is not the
11 Department of Corrections, the department shall forward the
12 multidisciplinary team's preliminary evaluation to the agency
13 with jurisdiction, and the agency with jurisdiction shall
14 reimburse the department for its use of the multidisciplinary
15 team.

16 (b) Notice to board; assessment; and notice to prosecuting
17 attorney.--

18 (1) If the multidisciplinary team's preliminary
19 evaluation is that the person is a sexually dangerous person,
20 the agency with jurisdiction shall give written notice of the
21 preliminary evaluation to the board. The agency with
22 jurisdiction shall provide the board with the records which
23 are necessary for the review by the board.

24 (2) The board shall conduct an assessment, which shall
25 include the board's determination of whether the person is in
26 need of commitment for involuntary treatment due to a mental
27 abnormality or personality disorder.

28 (3) At completion of the assessment, the board shall
29 provide the assessment to the agency with jurisdiction. The
30 agency with jurisdiction shall give written notice of the

assessment to the prosecuting attorney 90 days prior to:

(i) The anticipated release from confinement of a person who has been convicted of a sexually violent offense.

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

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

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

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

(3) The board's assessment.

Section 5. Probable cause hearing.

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

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

(c) Hearing.--

(1) At the probable cause hearing, the court shall verify the person's identity and determine whether probable cause exists to believe that the person is a sexually dangerous person. The prosecuting attorney may rely on the

petition and supplement the petition with additional documentary evidence or live testimony.

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

(i) To be represented by counsel.

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

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

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

(d) Transfer to appropriate facility.--

(1) (i) If the court determines that there is probable cause, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, pending an evaluation as to whether the person is a sexually dangerous person by a defense expert and pending trial.

(ii) The person may not be held in a regional forensic unit at a State hospital.

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

(e) Notice to agency with jurisdiction.--If the prosecuting attorney chooses not to file a petition pursuant to subsection (a) or, following the hearing, if the court finds that probable cause does not exist, the prosecuting attorney shall provide written notice of the decision to the agency with jurisdiction.

Section 6. Trial, counsel and examination.

(a) Time of trial.--Within 60 days after the completion of the probable cause hearing, the court shall conduct a trial to determine whether the person is a sexually dangerous person. The

1 trial may be continued:

2 (1) at the request of either party and a showing of good
3 cause; or

4 (2) by the court on its own motion in the due
5 administration of justice and when the person who is the
6 subject of the proceeding will not be substantially
7 prejudiced.

8 (b) Jury trial.--

9 (1) The person who is the subject of the proceeding or
10 the prosecuting attorney shall have the right to demand that
11 the trial be before a jury.

12 (2) The demand for the trial to be before a jury must be
13 filed in writing at least four days prior to trial. The
14 number and selection of jurors shall be as provided by law
15 for civil cases and the Pennsylvania Rules of Civil
16 Procedure.

17 (3) If no demand is made, the trial shall be held before
18 the judge.

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

23 (d) Examination.--

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

28 (2) When the person's qualified expert is identified to
29 the court, the court shall direct the board to provide the
30 expert with the materials that were part of the board's

1 assessment and the expert shall be permitted to have
2 reasonable access to the person for the purpose of the
3 examination, as well as to relevant medical and psychological
4 records and reports.

5 (e) Indigent persons.--

6 (1) In the case of a person who is indigent, the court,
7 at the person's request, shall determine whether the services
8 are necessary and reasonable compensation for any necessary
9 services. The court shall assist the person in obtaining a
10 professionally qualified expert in the field of sexual
11 violence or abuse to perform an examination or participate in
12 the trial on the person's behalf.

13 (2) The court shall approve payment for the services on
14 the filing of a certified claim for compensation supported by
15 a written statement specifying the time expended, services
16 rendered, expenses incurred on behalf of the person and
17 compensation received in the same case or for the same
18 services from any other source.

19 Section 7. Determination and commitment.

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

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

27 (c) Commitment.--

28 (1) (i) If the court or jury determines that the person
29 is a sexually dangerous person, the person shall be
30 committed to the custody of the Department of Public

1 Welfare for control, care and treatment until the
2 person's mental abnormality or personality disorder has
3 so changed that the person is safe to be at large.

4 (ii) The control, care and treatment shall be
5 provided at a facility operated by the department subject
6 to the provisions of subsection (e). The person may not
7 be held in a regional forensic unit at a State hospital.

8 (2) The court shall provide written notice of the
9 commitment to the agency with jurisdiction which in turn
10 shall, if applicable, provide written notice to the agency or
11 official who authorized the person's parole.

12 (d) Secure facility.--

13 (1) At all times, persons committed for control, care
14 and treatment by the Department of Public Welfare pursuant to
15 this act shall be kept in a secure facility and shall be
16 segregated at all times from any other patient under the
17 supervision of the department.

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

22 (e) Release.--If the court or jury is not satisfied beyond a
23 reasonable doubt that the person is a sexually dangerous person,
24 the court shall provide written notice to the agency with
25 jurisdiction.

26 (g) Mistrial.--

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

unit at a State hospital.

(2) Any subsequent trial following a mistrial shall be held within 90 days of the previous trial unless the subsequent trial is continued as provided under section 6(a).

Section 8. Incompetent to stand trial.

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

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

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

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

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

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

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

(d) Final order.--If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the

1 person committed the act or acts charged, the court shall enter
2 a final order, appealable by the person, on that issue and may
3 proceed to consider whether the person should be committed
4 pursuant to this act.

5 Section 9. Detention and commitment.

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

9 Section 10. Annual examinations; procedure.

10 (a) Examination.--

11 (1) The board shall conduct for each person committed
12 under this act an examination of the person's mental
13 condition once each year.

14 (2) The person may retain, or if the person is indigent
15 and so requests the court may appoint, a professionally
16 qualified expert in the field of sexual violence or abuse to
17 examine the person and the expert shall have access to all
18 records concerning the person, including the board's
19 assessment under paragraph (1).

20 (b) Report to the court.--

21 (1) (i) The yearly report shall be provided to the
22 court that committed the person under this act. The court
23 shall conduct an annual review of the status of the
24 committed person.

25 (ii) Nothing in this act shall be construed to
26 prohibit the person from otherwise petitioning the court
27 for release at this hearing.

28 (2) The Department of Public Welfare shall provide the
29 committed person with an annual written notice of the
30 committed person's right to petition the court for release

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

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

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

15 (e) Hearing.--At the hearing, the committed person shall be
16 entitled to be present and entitled to the benefit of all
17 constitutional protections that were afforded the committed
18 person at the initial commitment proceeding.

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

25 Section 11. Petition for release and procedure.

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

1 committed person to petition the court for release.

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

5 (c) Hearing.--The hearing shall be held in the manner
6 provided for under the provisions of section 10(e) and (f).

7 (d) Burden of proof.--The burden of proof shall be on the
8 prosecuting attorney to show beyond a reasonable doubt that the
9 committed person's mental abnormality or personality disorder
10 remains such that the committed person is not safe to be at
11 large and, if released, is likely to engage in acts of sexual
12 violence.

13 (e) Subsequent petitions.--

14 (1) Except as otherwise provided for in paragraph (2),
15 nothing in this act shall be construed to prohibit a
16 committed person from filing a petition for release pursuant
17 to this act.

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

27 (3) On receipt of a petition from a committed person,
28 the court shall endeavor whenever possible to review the
29 petition and determine if the petition is based on frivolous
30 grounds and, if so, shall deny the petition without a

1 hearing.

2 (f) Involuntary outpatient treatment.--

3 (1) If a committed person is eligible for release from
4 involuntary commitment pursuant to section 10 or this
5 section, the court may order the committed person to undergo
6 involuntary outpatient treatment in order to transition back
7 into the community.

8 (g) Notice to victims.--

9 (1) In addition to any other information required to be
10 released under this act, prior to the release of a person
11 committed under this act, the Department of Public Welfare
12 shall give written notice of the release to the Office of
13 Victim Advocate, which shall provide written notice under the
14 act of November 24, 1998 (P.L.882, No.111), known as the
15 Crime Victims Act, to any victim of the committed person's
16 activities or crime who is alive and whose address is known
17 to the Pennsylvania Board of Probation and Parole's Office of
18 Victim Advocate or, if the victim is deceased, to the
19 victim's family if the family's address is known to the
20 Office of Victim Advocate.

21 (2) (i) The notice required by this section shall not
22 apply to any victim or victim's family that has notified
23 the Office of Victim Advocate that they do not wish to be
24 notified of the release.

25 (ii) Failure to notify shall not be a reason for
26 postponement of release.

27 (3) Nothing in this subsection shall be construed as
28 establishing a cause of action against the Commonwealth or
29 any employee of the Commonwealth acting within the scope of
30 the employee's employment as a result of the failure to

1 notify under this act.

2 Section 12. Records.

3 (a) Confidentiality.--Relevant information and records that
4 are otherwise confidential or privileged shall be released to
5 the agency with jurisdiction or, if different, to the Department
6 of Corrections, the board or the prosecuting attorney for the
7 purpose of meeting the notice requirement of section 4 and
8 determining whether a person is or continues to be a sexually
9 dangerous person.

10 (b) Court order.--Any psychological reports, drug and
11 alcohol reports, treatment records, reports of the diagnostic
12 center, medical records or victim impact statements that have
13 been submitted to the court or admitted into evidence under this
14 act shall be part of the record but shall be sealed and opened
15 only on order of the court.

16 Section 13. Regulations.

17 The Department of Corrections, the Department of Public
18 Welfare and the board may issue regulations necessary for the
19 implementation of this act.

20 Section 14. Effective date.

21 This act shall take effect as follows:

22 (1) Section 13 and this section shall take effect
23 immediately.

24 (2) The remainder of this act shall take effect in 180
25 days.