Civil Commitment of Sex Offenders

Updated April 2012

This compilation includes statutory schemes that allow for the civil commitment of a subsection of sex offenders, most commonly referred to as sexually violent predators. As this is a relatively new area of law, we recommend checking case law and current legislation for any possible modifications.

ALABAMA

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ARIZ. REV. STAT. ANN. § 36-3701 (2012). Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency that is authorized to direct the release of a person who is serving a sentence or term of confinement or who is receiving treatment, including a state or federal prison, a county jail and the Arizona state hospital.

2. "Competent professional" means a person who is:

(a) Familiar with the state's sexually violent persons statutes and sexual offender treatment programs available in this state.

(b) Approved by the superior court as meeting court approved guidelines.

3. "Conviction" includes a finding of guilt at any time for a sexually violent offense or an order of the juvenile court adjudicating the person delinquent for any sexually violent offense.

4. "Less restrictive alternative" means court ordered treatment in a setting that is less restrictive than total confinement and that is conducted in a setting approved by the superintendent of the state hospital.

5. "Mental disorder" means a paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder and conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others.

6. "Sexually violent offense" means any of the following:

(a) Indecent exposure to a person who is under fifteen years of age pursuant to § 13-1402, public sexual indecency to a minor pursuant to § 13-1403, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, continuous sexual abuse of a child pursuant to § 13-1417 or sexual assault of a spouse if the offense was committed before August 12, 2005.

(b) Second degree murder pursuant to § 13-1104, first degree murder pursuant to § 13-1105, assault pursuant to § 13-1203, aggravated assault pursuant to § 13-1204, unlawful imprisonment pursuant to § 13-1303, kidnapping pursuant to § 13-1304 or burglary in the first degree pursuant to § 13-1508 if the court at the time of sentencing or civil commitment proceedings determines beyond a reasonable doubt that the act was sexually motivated pursuant to § 13-118.

(c) An attempt, a solicitation, a facilitation or a conspiracy to commit an offense listed in subdivision (a) or (b) of this paragraph.

(d) An act committed in another jurisdiction that if committed in this state would be a sexually violent offense listed in subdivision (a), (b) or (c) of this paragraph.

(e) A conviction for a felony offense that was in effect before September 1, 1978 and that if committed on or after September 1, 1978 would be comparable to a sexually violent offense listed in subdivision (a) or (b) of this paragraph.

7. "Sexually violent person" means a person to whom both of the following apply:

(a) Has ever been convicted of or found guilty but insane of a sexually violent offense or was charged with a sexually violent offense and was determined incompetent to stand trial.

(b) Has a mental disorder that makes the person likely to engage in acts of sexual violence.

ARIZ. REV. STAT. ANN. § 36-3704 (2012). Sexually violent person petition; filing; procedures

A. Before a sexually violent person is released from confinement, the following persons may file a petition in superior court alleging that the person is a sexually violent person and stating sufficient facts to support that allegation:

1. The county attorney in the county in which a person was found incompetent to stand trial of, found guilty except insane of or convicted of a sexually violent offense.

2. The county attorney in the county in which the person will be released or the attorney general if the person was found incompetent to stand trial of, found guilty except insane of or convicted of a sexually violent offense in another jurisdiction outside the state.

B. The Arizona rules of evidence and the Arizona rules of civil procedure apply to proceedings under this article. The court may admit evidence of past acts that would constitute a sexual offense pursuant to § 13-1420 and the Arizona rules of evidence.

C. The person who is named in the petition is entitled to assistance of counsel at any proceeding that is conducted pursuant to this article. If the person is indigent, the court

shall appoint counsel to assist the person. The county board of supervisors may fix a reasonable amount to be paid by the county for the services of an appointed attorney.

D. The court's jurisdiction over a person who is civilly committed pursuant to this article continues until the person is discharged by the court.

E. At any hearing concerning conditions of detention, commitment or treatment at a licensed facility under the supervision of the superintendent of the Arizona state hospital, a person who is detained or committed pursuant to this article shall show that the procedures or actions of the licensed facility have no reasonable basis in fact or law.

ARIZ. REV. STAT. ANN. § 36-3705 (2012). Judicial determination of sexually violent person; transfer for evaluation

A. On the filing of a petition pursuant to § 36-3704, the judge shall determine if probable cause exists to believe that the person named in the petition is a sexually violent person.

B. If the judge determines that probable cause exists to believe that the person named in the petition is a sexually violent person, the judge shall order that the person be detained in a licensed facility under the supervision of the superintendent of the Arizona state hospital.

C. On motion of the respondent filed within ten days after service of the petition, the court shall hold a probable cause hearing.

D. Within seventy-two hours after a person is detained pursuant to subsection B of this section, the court shall provide the person with notice of and an opportunity to appear at a probable cause hearing to contest the probable cause finding made by the court pursuant to subsection A of this section. At the hearing, the court shall verify the person's identity and shall determine if probable cause exists to believe that the person is a sexually violent person. At the hearing, the state may rely on the petition that alleges that the person is a sexually violent person and that is filed pursuant to § 36-3704. The state may supplement the information in the petition with additional documentary evidence or live testimony.

E. At the probable cause hearing, the person has the following rights:

1. To present evidence on the person's behalf.

2. To cross-examine witnesses who testify against the person.

3. To view and copy all documents and reports in the court file.

F. After the hearing, if the court determines probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

G. If at the hearing the court reaffirms that probable cause exists to believe that the person is a sexually violent person, the judge shall order an evaluation as to whether the

person is a sexually violent person. A person whom the court selects from a list of competent professionals shall conduct the evaluation.

H. If the respondent has not requested a probable cause hearing within ten days after service of the petition, the court shall order an evaluation as to whether the respondent is a sexually violent person. A person whom the court selects from a list of competent professionals shall conduct the evaluation.

I. The county shall pay the costs of an evaluation conducted pursuant to subsection G or H of this section.

J. The referring agency shall make available to the department of health services all records concerning the person detained pursuant to this section.

ARIZ. REV. STAT. ANN. § 36-3707 (2012). Determining sexually violent person status; commitment procedures

A. The court or jury shall determine beyond a reasonable doubt if the person named in the petition is a sexually violent person. If the state alleges that the sexually violent offense on which the petition for commitment is based was sexually motivated, the state shall prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

B. If the court or jury determines that the person is a sexually violent person, the court shall either:

1. Commit the person to the custody of the department of health services for placement in a licensed facility under the supervision of the superintendent of the Arizona state hospital and shall receive care, supervision or treatment until the person's mental disorder has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged.

2. Order that the person be released to a less restrictive alternative if the conditions under §§ 36-3710 and 36-3711 are met.

C. If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent person, the court shall order the person's release.

D. If the person named in the petition was found incompetent to stand trial, the court first shall hear evidence and determine if the person committed the act or acts charged if the court did not enter a finding before the charges were dismissed. The court shall enter specific findings on whether the person committed the act or acts charged, the extent to which the person's incompetence to stand trial 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, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If the court finds beyond a reasonable doubt that the person committed the act or acts charged, the

court shall enter a final order to that effect and may then consider whether the person should be committed pursuant to this section.

ARIZ. REV. STAT. ANN. § 36-3708 (2012). Annual examination of committed persons; report

A. The psychiatrist, psychologist or other competent professional of the state hospital or a licensed facility under the supervision of the superintendent of the Arizona state hospital shall annually examine each person who is committed pursuant to this article. The person who conducts the annual examination shall submit the examination report to the court. The annual report shall state if conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community.

B. The person may retain, or on the request of an indigent person the court may appoint, a competent professional to conduct the examination. A retained or appointed competent professional shall have access to all records concerning the person. If the person retains or is appointed a competent professional, the state has the right to have the committed person evaluated by a competent professional of the state's own choice. All competent professionals shall have equal access to the person as well as all records concerning the person.

C. The court shall hold a hearing pursuant to § 36-3709 if any change of release conditions is recommended.

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CAL. WELF. & INST. CODE § 6600 (2012). Definitions

As used in this article, the following terms have the following meanings:

(a)(1) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5,

or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, a prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following apply:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b).

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

CAL. WELF. & INST. CODE § 6601 (2012). Persons in custody; determination as potential sexually violent predator; prerelease evaluations; petition for commitment; time limitations exclusion; costs to department; reports

<Section operative until execution of specified declaration by director or Jan. 1, 2013, whichever occurs first. See, also, section operative upon execution of specified declaration by director or Jan. 1, 2013, whichever occurs first.>

(a)(1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health, one or both of whom may be independent professionals as defined in subdivision (g). If both evaluators concur that the

person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(*l*) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m)(1) The department shall provide the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, with a semiannual update on the progress made to hire qualified state employees to conduct the evaluation required pursuant to subdivision (d). The first update shall be provided no later than July 10, 2009.

(2) On or before January 2, 2010, the department shall report to the Legislature on all of the following:

(A) The costs to the department for the sexual offender commitment program attributable to the provisions in Proposition 83 of the November 2006 general election, otherwise known as Jessica's Law.

(B) The number and proportion of inmates evaluated by the department for commitment to the program as a result of the expanded evaluation and commitment criteria in Jessica's Law.

(C) The number and proportion of those inmates who have actually been committed for treatment in the program.

(3) This section shall remain in effect and be repealed on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

CAL. WELF. & INST. CODE § 6601 (2012). Persons in custody; determination as potential sexually violent predator; prerelease evaluations; petition for commitment; time limitations exclusion; costs to department; reports

<Section operative upon execution of specified declaration by director or Jan. 1, 2013, whichever occurs first. See, also, section operative until execution of specified declaration by director or Jan. 1, 2013, whichever occurs first.>

(a)(1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of

sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) This section shall become operative on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

CAL. WELF. & INST. CODE § 6601.5 (2012). Review of petition for likelihood of sexually violent predatory criminal behavior upon release

Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

CAL. WELF. & INST. CODE § 6604 (2012). Burden of proof; commitment for treatment; term; facilities

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections

CAL. WELF. & INST. CODE § 6605 (2012). Post-commitment examinations; filing of report with court; petition for conditional release; hearing; burden of proof; term of commitment; request for review by Department of Mental Health

(a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The State Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) If the State Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney, or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others

and is likely to engage in sexually violent criminal behavior if discharged. Where the person's failure to participate in or complete treatment is relied upon as proof that the person's condition has not changed, and there is evidence to support that reliance, the jury shall be instructed substantially as follows:

“The committed person's failure to participate in or complete the State Department of Mental Health Sex Offender Commitment Program (SOCP) are facts that, if proved, may be considered as evidence that the committed person's condition has not changed. The weight to be given that evidence is a matter for the jury to determine.”

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

COLORADO

CONNECTICUT

DELAWARE

DISTRICT OF COLUMBIA

D.C. Code 22-3803 (2012). Definitions.

For the purposes of this chapter:

(1) The term “sexual psychopath” means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his or her sexual impulses as to be dangerous to other persons because he or she is likely to

attack or otherwise inflict injury, loss, pain, or other evil on the objects of his or her desire.

(2) The term "court" means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from the time the person is indicted, charged by an information, or charged with a delinquent act, to the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

D.C. CODE § 22-3808 (2012). Hearing; commitment

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within 15 days after the date on which the second report is filed pursuant to § 22-3806, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him or her to an institution to be confined there until released in accordance with § 22-3809.

D.C. CODE § 22-3809 (2012). Parole; discharge

Any person committed under this chapter may be released from confinement when an appropriate supervisory official finds that he or she has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefore, that official shall give notice thereof to the judge of the criminal court and deliver him or her to the court in obedience to proper precept.

FLORIDA

FLA. STAT. ANN. § 394.912 (2012). Definitions

As used in this part, the term:

(1) "Agency with jurisdiction" means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the Department of Corrections, a person who was adjudicated delinquent and is committed to the custody of

the Department of Juvenile Justice, or a person who was involuntarily committed to the custody of the Department of Children and Family Services upon an adjudication of not guilty by reason of insanity.

(2) “Convicted of a sexually violent offense” means a person who has been:

(a) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Adjudicated delinquent of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere.

(3) “Department” means the Department of Children and Family Services.

(4) “Likely to engage in acts of sexual violence” means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(5) “Mental abnormality” means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

(6) “Person” means an individual 18 years of age or older who is a potential or actual subject of proceedings under this part.

(7) “Secretary” means the secretary of the Department of Children and Family Services.

(8) “Sexually motivated” means that one of the purposes for which the defendant committed the crime was for sexual gratification.

(9) “Sexually violent offense” means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a) 2.;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

(10) "Sexually violent predator" means any person who:

(a) Has been convicted of a sexually violent offense; and

(b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(11) "Total confinement" means that the person is currently being held in any physically secure facility being operated or contractually operated for the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Family Services. A person shall also be deemed to be in total confinement for applicability of provisions under this part if the person is serving an incarcerative sentence under the custody of the Department of Corrections or the Department of Juvenile Justice and is being held in any other secure facility for any reason.

FLA. STAT. ANN. § 94.914 (2012). Petition; contents

Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, in accordance with s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. No fee shall be charged for the filing of a petition under this section.

FLA. STAT. ANN. § 394.915 (2012). Determination of probable cause; hearing; evaluation; respondent taken into custody; bail

(1) When the state attorney files a petition seeking to have a person declared a sexually violent predator, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order that the person remain in custody and be immediately transferred to an appropriate secure facility if the person's incarcerative sentence expires.

(2) Upon the expiration of the incarcerative sentence and before the release from custody of a person whom the multidisciplinary team recommends for civil commitment, but after the state attorney files a petition under s. 394.914, the court may conduct an adversarial probable cause hearing if it determines such hearing is necessary. The court shall only consider whether to have an adversarial probable cause hearing in cases where the failure to begin a trial is not the result of any delay caused by the respondent. The person shall be provided with notice of, and an opportunity to appear in person at, an adversarial hearing. At this hearing, the judge shall:

(a) Receive evidence and hear argument from the person and the state attorney; and

(b) Determine whether probable cause exists to believe that the person is a sexually violent predator.

(3) At the adversarial probable cause hearing, the person has the right to:

(a) Be represented by counsel;

(b) Present evidence;

(c) Cross-examine any witnesses who testify against the person; and

(d) View and copy all petitions and reports in the court file.

(4) If the court again concludes that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person be held in an appropriate secure facility upon the expiration of his or her incarcerative sentence.

(5) After a court finds probable cause to believe that the person is a sexually violent predator, the person must be held in custody in a secure facility without opportunity for pretrial release or release during the trial proceedings.

FLA. STAT. ANN. § 394.917 (2012). Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases

(1) The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the verdict must be unanimous. If the jury is unable to reach a unanimous verdict, the court must declare a mistrial and poll the jury. If a majority of the jury would find the person is a

sexually violent predator, the state attorney may refile the petition and proceed according to the provisions of this part. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with s. 394.916(2). The determination that a person is a sexually violent predator may be appealed.

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds that are appropriated for such purposes.

FLA. STAT. ANN. § 394.918 (2012). Examinations; notice; court hearings for release of committed persons; burden of proof

(1) A person committed under this part shall have an examination of his or her mental condition once every year or more frequently at the court's discretion. The person may retain or, if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such a professional shall have access to all records concerning the person. The results of the examination shall be provided to the court that committed the person under this part. Upon receipt of the report, the court shall conduct a review of the person's status.

(2) The department shall provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

(3) The court shall hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel at the probable cause hearing, but the person is not entitled to be present. If the court determines that there is probable cause to

believe it is safe to release the person, the court shall set a trial before the court on the issue.

(4) At the trial before the court, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. The state attorney shall represent the state and has the right to have the person examined by professionals chosen by the state. At the hearing, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

FLA. STAT. ANN. § 394.920 (2012). Petition for release

A person is not prohibited from filing a petition for discharge at any time after commitment under this part. However, if the person has previously filed such a petition without the approval of the secretary or the secretary's designee and the court determined that the petition was without merit, a subsequent petition shall be denied unless the petition contains facts upon which a court could find that the person's condition has so changed that a probable cause hearing is warranted.

GEORGIA

HAWAII

IDAHO

ILLINOIS

725 ILL. COMP. STAT. ANN. 207/5 (2012). Definitions

§ 5. Definitions. As used in this Act, the term:

(a) “Department” means the Department of Human Services.

(b) “Mental disorder” means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(c) “Secretary” means the Secretary of Human Services.

(d) “Sexually motivated” means that one of the purposes for an act is for the actor's sexual arousal or gratification.

(e) “Sexually violent offense” means any of the following:

(1) Any crime specified in Section 11-1.20, 11-1.30, 11-1.40, 11-1.60, 11-6, 11-20.1, 11-20.3, 12-13, 12-14, 12-14.1, or 12-16 of the Criminal Code of 1961; [FN1] or

(1.5) Any former law of this State specified in Section 11-1 (rape), 11-3 (deviate sexual assault), 11-4 (indecent liberties with a child) or 11-4.1 (aggravated indecent liberties with a child) of the Criminal Code of 1961; [FN2] or

(2) First degree murder, if it is determined by the agency with jurisdiction to have been sexually motivated; or

(3) Any solicitation, conspiracy or attempt to commit a crime under paragraph (e)(1) or (e)(2) of this Section.

(f) “Sexually violent person” means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of a sexually violent offense by reason of insanity and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

725 ILL. COMP. STAT. ANN. 207/9 (2012). Sexually violent person review; written notification to State's Attorney

The Illinois Department of Corrections or the Department of Juvenile Justice, not later than 6 months prior to the anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted or adjudicated delinquent of a sexually violent offense, shall send written notice to the State's Attorney in the county in which the person was convicted or adjudicated delinquent of the sexually violent offense informing the State's Attorney of the person's anticipated release date and that the person will be considered for commitment under this Act prior to that release date.

725 ILL. COMP. STAT. ANN. 207/10 (2012). Notice to the Attorney General and State's Attorney

(a) In this Act, “agency with jurisdiction” means the agency with the authority or duty to release or discharge the person.

(b) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform the Attorney General and the State's Attorney in a position to file a petition under paragraph (a)(2) of Section 15 of this Act regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(1) The anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted of a sexually violent offense.

(2) The anticipated release from a Department of Corrections correctional facility or juvenile correctional facility of a person adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 (now repealed) or found guilty under Section 5-620 of that Act, on the basis of a sexually violent offense.

(3) The discharge or conditional release of a person who has been found not guilty of a sexually violent offense by reason of insanity under Section 5-2-4 of the Unified Code of Corrections

(c) The agency with jurisdiction shall provide the Attorney General and the State's Attorney with all of the following:

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

(2) A comprehensive evaluation of the person's mental condition, the basis upon which a determination has been made that the person is subject to commitment under subsection (b) of Section 15 of this Act and a recommendation for action in furtherance of the purposes of this Act. The evaluation shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board; and

(3) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(d) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this Section.

725 ILL. COMP. STAT. ANN. 207/15 (2012). Sexually violent person petition; contents; filing

(a) A petition alleging that a person is a sexually violent person must be filed before the release or discharge of the person or within 30 days of placement onto parole or mandatory supervised release for an offense enumerated in paragraph (e) of Section 5 of this Act. A petition may be filed by the following:

(1) The Attorney General on his or her own motion, after consulting with and advising the State's Attorney of the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease, or mental defect; or

(2) The State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section, on his or her own motion; or

(3) The Attorney General and the State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section may jointly file a petition on their own motion; or

(4) A petition may be filed at the request of the agency with jurisdiction over the person, as defined in subsection (a) of Section 10 of this Act, by:

(a) the Attorney General;

(b) the State's Attorney of the county referenced in paragraph (1)(a)(1) of this Section; or

(c) the Attorney General and the State's Attorney jointly.

(b) A petition filed under this Section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(1) The person satisfies any of the following criteria:

(A) The person has been convicted of a sexually violent offense;

(B) The person has been found delinquent for a sexually violent offense; or

(C) The person has been found not guilty of a sexually violent offense by reason of insanity, mental disease, or mental defect.

(2) (Blank).

(3) (Blank).

(4) The person has a mental disorder.

(5) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(b-5) The petition must be filed no more than 90 days before discharge or entry into mandatory supervised release from a Department of Corrections or the Department of Juvenile Justice correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense. For inmates sentenced under the law in effect prior to February 1, 1978, the petition shall be filed no more than 90 days after the Prisoner Review Board's order granting parole pursuant to Section 3-3-5 of the Unified Code of Corrections.

(b-6) The petition must be filed no more than 90 days before discharge or release:

(1) from a Department of Juvenile Justice juvenile correctional facility if the person was placed in the facility for being adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 [FN1] or found guilty under Section 5-620 of that Act [FN2] on the basis of a sexually violent offense; or

(2) from a commitment order that was entered as a result of a sexually violent offense.

(b-7) A person convicted of a sexually violent offense remains eligible for commitment as a sexually violent person pursuant to this Act under the following circumstances: (1) the person is in custody for a sentence that is being served concurrently or consecutively with a sexually violent offense; (2) the person returns to the custody of the Illinois Department of Corrections or the Department of Juvenile Justice for any reason during the term of parole or mandatory supervised release being served for a sexually violent offense; or (3) the person is convicted or adjudicated delinquent for any offense committed during the term of parole or mandatory supervised release being served for a sexually violent offense, regardless of whether that conviction or adjudication was for a sexually violent offense.

(c) A petition filed under this Section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under paragraph (b)(1) of this Section was an act that was sexually motivated as provided under paragraph (e)(2) of Section 5 of this Act, the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(d) A petition under this Section shall be filed in either of the following:

(1) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of insanity, mental disease or mental defect.

(2) The circuit court for the county in which the person is in custody under a sentence, a placement to a Department of Corrections correctional facility or a Department of Juvenile Justice juvenile correctional facility, or a commitment order.

(e) The filing of a petition under this Act shall toll the running of the term of parole or mandatory supervised release until:

(1) dismissal of the petition filed under this Act;

(2) a finding by a judge or jury that the respondent is not a sexually violent person; or

(3) the sexually violent person is discharged under Section 65 of this Act.

(f) The State has the right to have the person evaluated by experts chosen by the State. The agency with jurisdiction as defined in Section 10 of this Act shall allow the expert

reasonable access to the person for purposes of examination, to the person's records, and to past and present treatment providers and any other staff members relevant to the examination.

725 ILL. COMP. STAT. ANN. 207/25 (2012). Rights of persons subject to petition

(a) Any person who is the subject of a petition filed under Section 15 of this Act shall be served with a copy of the petition in accordance with the Civil Practice Law.

(b) The circuit court in which a petition under Section 15 of this Act is filed shall conduct all hearings under this Act. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(c) Except as provided in paragraph (b)(1) of Section 65 and Section 70 of this Act, at any hearing conducted under this Act, the person who is the subject of the petition has the right:

(1) To be present and to be represented by counsel. If the person is indigent, the court shall appoint counsel.

(2) To remain silent.

(3) To present and cross-examine witnesses.

(4) To have the hearing recorded by a court reporter.

(d) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under Section 35 of this Act be to a jury. A verdict of a jury under this Act is not valid unless it is unanimous.

(e) Whenever the person who is the subject of the petition is required to submit to an examination under this Act, he or she may retain experts or professional persons to perform an examination. The State has the right to have the person evaluated by an expert chosen by the State. All examiners retained by or appointed for any party shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person.

725 ILL. COMP. STAT. ANN. 207/35 (2012). Trial

(a) A trial to determine whether the person who is the subject of a petition under Section 15 of this Act is a sexually violent person shall commence no later than 120 days after the

date of the probable cause hearing under Section 30 of this Act. Delay is considered to be agreed to by the person unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. Delay occasioned by the person temporarily suspends for the time of the delay the period within which a person must be tried. If the delay occurs within 21 days after the end of the period within which a person must be tried, the court may continue the cause on application of the State for not more than an additional 21 days beyond the period prescribed. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties, provided that any continuance granted shall be subject to Section 103-5 of the Code of Criminal Procedure of 1963. [FN1]

(b) At the trial on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were imposed. The petitioner may present expert testimony from both the Illinois Department of Corrections evaluator and the Department of Human Services psychologist.

(c) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under this Section be by a jury. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under Section 30 of this Act. If no request is made, the trial shall be by the court. The person, the person's attorney or the Attorney General or State's Attorney, whichever is applicable, may withdraw his or her request for a jury trial.

(d) (1) At a trial on a petition under this Act, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(2) If the State alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in paragraph (e)(2) of Section 5 of this Act, the State is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(e) Evidence that the person who is the subject of a petition under Section 15 of this Act was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(f) If the court or jury determines that the person who is the subject of a petition under Section 15 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under Section 40 of this Act. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

(g) A judgment entered under subsection (f) of this Section on the finding that the person who is the subject of a petition under Section 15 is a sexually violent person is interlocutory to a commitment order under Section 40 and is reviewable on appeal.

725 ILL. COMP. STAT. ANN. 207/40 (2012). Commitment

(a) If a court or jury determines that the person who is the subject of a petition under Section 15 of this Act is a sexually violent person, the court shall order the person to be committed to the custody of the Department for control, care and treatment until such time as the person is no longer a sexually violent person.

(b)(1) The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 is a sexually violent person. If the court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order. If the Department's examining evaluator previously rendered an opinion that the person who is the subject of a petition under Section 15 does not meet the criteria to be found a sexually violent person, then another evaluator shall conduct the predisposition investigation and/or supplementary mental examination. A supplementary mental examination under this Section shall be conducted in accordance with Section 3-804 of the Mental Health and Developmental Disabilities Code. The State has the right to have the person evaluated by experts chosen by the State.

(2) An order for commitment under this Section shall specify either institutional care in a secure facility, as provided under Section 50 of this Act, or conditional release. In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment. All treatment, whether in institutional care, in a secure facility, or while on conditional release, shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and conducted by a treatment provider approved by the Board. The Department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

(3) If the court finds that the person is appropriate for conditional release, the court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in

the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan. The conditional release program operated under this Section is not subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act.

(4) An order for conditional release places the person in the custody and control of the Department. A person on conditional release is subject to the conditions set by the court and to the rules of the Department. Before a person is placed on conditional release by the court under this Section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this Section does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. Notwithstanding any other provision in the Act, the person being supervised on conditional release shall not reside at the same street address as another sex offender being supervised on conditional release under this Act, mandatory supervised release, parole, probation, or any other manner of supervision. If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody under the rules of the Department.

At any time during which the person is on conditional release, if the Department determines that the person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, the Department may request the Attorney General or State's Attorney to request the court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and transport the person to the county jail. The Department may request, or the Attorney General or State's Attorney may request independently of the Department, that a petition to revoke conditional release be filed. When a petition is filed, the court may order the Department to issue a notice to the person to be present at the Department or other agency designated by the court, order a summons to the person to be present, or order a body attachment for all law enforcement officers to take the person into custody and transport him or her to the county jail, hospital, or treatment facility. The Department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the Department may detain the person in a jail, in a hospital or treatment facility. The State has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that the conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate

institution until the person is discharged from the commitment under Section 65 of this Act or until again placed on conditional release under Section 60 of this Act.

(5) An order for conditional release places the person in the custody, care, and control of the Department. The court shall order the person be subject to the following rules of conditional release, in addition to any other conditions ordered, and the person shall be given a certificate setting forth the conditions of conditional release. These conditions shall be that the person:

(A) not violate any criminal statute of any jurisdiction;

(B) report to or appear in person before such person or agency as directed by the court and the Department;

(C) refrain from possession of a firearm or other dangerous weapon;

(D) not leave the State without the consent of the court or, in circumstances in which the reason for the absence is of such an emergency nature, that prior consent by the court is not possible without the prior notification and approval of the Department;

(E) at the direction of the Department, notify third parties of the risks that may be occasioned by his or her criminal record or sexual offending history or characteristics, and permit the supervising officer or agent to make the notification requirement;

(F) attend and fully participate in assessment, treatment, and behavior monitoring including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate to the person based upon the recommendation and findings made in the Department evaluation or based upon any subsequent recommendations by the Department;

(G) waive confidentiality allowing the court and Department access to assessment or treatment results or both;

(H) work regularly at a Department approved occupation or pursue a course of study or vocational training and notify the Department within 72 hours of any change in employment, study, or training;

(I) not be employed or participate in any volunteer activity that involves contact with children, except under circumstances approved in advance and in writing by the Department officer;

(J) submit to the search of his or her person, residence, vehicle, or any personal or real property under his or her control at any time by the Department;

(K) financially support his or her dependents and provide the Department access to any requested financial information;

(L) serve a term of home confinement, the conditions of which shall be that the person:

(i) remain within the interior premises of the place designated for his or her confinement during the hours designated by the Department;

(ii) admit any person or agent designated by the Department into the offender's place of confinement at any time for purposes of verifying the person's compliance with the condition of his or her confinement;

(iii) if deemed necessary by the Department, be placed on an electronic monitoring device;

(M) comply with the terms and conditions of an order of protection issued by the court pursuant to the Illinois Domestic Violence Act of 1986. [FN3] A copy of the order of protection shall be transmitted to the Department by the clerk of the court;

(N) refrain from entering into a designated geographic area except upon terms the Department finds appropriate. The terms may include consideration of the purpose of the entry, the time of day, others accompanying the person, and advance approval by the Department;

(O) refrain from having any contact, including written or oral communications, directly or indirectly, with certain specified persons including, but not limited to, the victim or the victim's family, and report any incidental contact with the victim or the victim's family to the Department within 72 hours; refrain from entering onto the premises of, traveling past, or loitering near the victim's residence, place of employment, or other places frequented by the victim;

(P) refrain from having any contact, including written or oral communications, directly or indirectly, with particular types of persons, including but not limited to members of street gangs, drug users, drug dealers, or prostitutes;

(Q) refrain from all contact, direct or indirect, personally, by telephone, letter, or through another person, with minor children without prior identification and approval of the Department;

(R) refrain from having in his or her body the presence of alcohol or any illicit drug prohibited by the Cannabis Control Act, [FN4] the Illinois Controlled Substances Act, [FN5] or the Methamphetamine Control and Community Protection Act, unless prescribed by a physician, and submit samples of his or her breath, saliva, blood, or urine for tests to determine the presence of alcohol or any illicit drug;

(S) not establish a dating, intimate, or sexual relationship with a person without prior written notification to the Department;

(T) neither possess or have under his or her control any material that is pornographic, sexually oriented, or sexually stimulating, or that depicts or alludes to sexual activity or depicts minors under the age of 18, including but not limited to visual, auditory, telephonic, electronic media, or any matter obtained through access to any computer or material linked to computer access use;

(U) not patronize any business providing sexually stimulating or sexually oriented entertainment nor utilize “900” or adult telephone numbers or any other sex-related telephone numbers;

(V) not reside near, visit, or be in or about parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate without advance approval of the Department and report any incidental contact with minor children to the Department within 72 hours;

(W) not establish any living arrangement or residence without prior approval of the Department;

(X) not publish any materials or print any advertisements without providing a copy of the proposed publications to the Department officer and obtaining permission prior to publication;

(Y) not leave the county except with prior permission of the Department and provide the Department officer or agent with written travel routes to and from work and any other designated destinations;

(Z) not possess or have under his or her control certain specified items of contraband related to the incidence of sexually offending items including video or still camera items or children's toys;

(AA) provide a written daily log of activities as directed by the Department;

(BB) comply with all other special conditions that the Department may impose that restrict the person from high-risk situations and limit access or potential victims.

(6) A person placed on conditional release and who during the term undergoes mandatory drug or alcohol testing or is assigned to be placed on an approved electronic monitoring device may be ordered to pay all costs incidental to the mandatory drug or alcohol testing and all costs incidental to the approved electronic monitoring in accordance with the person's ability to pay those costs. The Department may establish reasonable fees for the cost of maintenance, testing, and incidental expenses related to the mandatory drug or alcohol testing and all costs incidental to approved electronic monitoring.

725 ILL. COMP. STAT. ANN. 207/55 (2012). Periodic reexamination; report

(a) If a person has been committed under Section 40 of this Act and has not been discharged under Section 65 of this Act, the Department shall submit a written report to the court on his or her mental condition within 6 months after an initial commitment under Section 40 and then at least once every 12 months thereafter for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

(b) Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the court that committed the person under Section 40. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board.

(c) Notwithstanding subsection (a) of this Section, the court that committed a person under Section 40 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination.

(d) Petitions for discharge after reexamination must follow the procedure outlined in Section 65 of this Act.

725 ILL. COMP. STAT. ANN. 207/60 (2012). Petition for conditional release

(a) Any person who is committed for institutional care in a secure facility or other facility under Section 40 of this Act may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, an order continuing commitment was entered pursuant to Section 65, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this Section on the person's behalf at any time. If the evaluator on behalf of the Department recommends that the committed person is appropriate for conditional release, then the director or designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice of his or her intention whether or not to petition for conditional release on the committed person's behalf.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the Attorney General or State's Attorney, whichever is applicable and, subject to paragraph (c)(1) of Section 25 of this Act, appoint counsel. If the person petitions through counsel, his or her attorney shall serve the Attorney General or State's Attorney, whichever is applicable.

(c) Within 20 days after receipt of the petition, upon the request of the committed person or on the court's own motion, the court may appoint an examiner having the specialized

knowledge determined by the court to be appropriate, who shall examine the mental condition of the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release. The State has the right to have the person evaluated by experts chosen by the State. Any examination or evaluation conducted under this Section shall be in conformance with the standards developed under the Sex Offender Management Board Act and conducted by an evaluator approved by the Board. The court shall set a probable cause hearing as soon as practical after the examiners' reports are filed. The probable cause hearing shall consist of a review of the examining evaluators' reports and arguments on behalf of the parties. If the court determines at the probable cause hearing that cause exists to believe that it is not substantially probable that the person will engage in acts of sexual violence if on release or conditional release, the court shall set a hearing on the issue.

(d) The court, without a jury, shall hear the petition as soon as practical after the reports of all examiners are filed with the court. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress to be conditionally released. In making a decision under this subsection, the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 of this Act, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.

(e) Before the court may enter an order directing conditional release to a less restrictive alternative it must find the following: (1) the person will be treated by a Department approved treatment provider, (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for the treatment and will report progress to the Department on a regular basis, and will report violations immediately to the Department, consistent with treatment and supervision needs of the respondent, (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the Department if the person leaves the housing to which he or she has been assigned without authorization, (4) the person is willing to or has agreed to comply with the treatment provider, the Department, and the court, and (5) the person has agreed or is willing to agree to comply with the behavioral monitoring requirements imposed by the court and the Department.

(f) If the court finds that the person is appropriate for conditional release, the court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse

treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.

(g) The provisions of paragraphs (b)(4), (b)(5), and (b)(6) of Section 40 of this Act apply to an order for conditional release issued under this Section.

725 ILL. COMP. STAT. ANN. 207/65 (2012). Petition for discharge; procedure

(a)(1) If the Secretary determines at any time that a person committed under this Act is no longer a sexually violent person, the Secretary shall authorize the person to petition the committing court for discharge. If the evaluator on behalf of the Department recommends that the committed person is no longer a sexually violent person, then the Secretary or designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice of his or her determination whether or not to authorize the committed person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the Attorney General or the State's Attorney's office that filed the petition under subsection (a) of Section 15 of this Act, whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held as soon as practical after the date of receipt of the petition.

(2) At a hearing under this subsection, the Attorney General or State's Attorney, whichever filed the original petition, shall represent the State and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. The committed person or the State may elect to have the hearing before a jury. The State has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (a)(2) of this Section, the petitioner shall be discharged from the custody or supervision of the Department. If the court is satisfied that the State has met its burden of proof under paragraph (a)(2), the court may proceed under Section 40 of this Act to determine whether to modify the petitioner's existing commitment order.

(b)(1) A person may petition the committing court for discharge from custody or supervision without the Secretary's approval. At the time of an examination under subsection (a) of Section 55 of this Act, the Secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the Secretary's objection. The notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the report of the Department's

examination under Section 55 of this Act. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. If a person does not file a petition for discharge, yet fails to waive the right to petition under this Section, then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing. The probable cause hearing under this Section must be held as soon as practical after the filing of the reexamination report under Section 55 of this Act.

(2) If the court determines at the probable cause hearing under paragraph (b)(1) of this Section that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this Section, the committed person is entitled to be present and to the benefit of the protections afforded to the person under Section 25 of this Act. The committed person or the State may elect to have a hearing under this Section before a jury. A verdict of a jury under this Section is not valid unless it is unanimous. The Attorney General or State's Attorney, whichever filed the original petition, shall represent the State at a hearing under this Section. The State has the right to have the committed person evaluated by experts chosen by the State. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. At the hearing, the State has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (b)(2) of this Section, the person shall be discharged from the custody or supervision of the Department. If the court or jury is satisfied that the State has met its burden of proof under paragraph (b)(2) of this Section, the court may proceed under Section 40 of this Act to determine whether to modify the person's existing commitment order.

725 ILL. COMP. STAT. ANN. 207/70 (2012). Additional discharge petitions

In addition to the procedures under Section 65 of this Act, a committed person may petition the committing court for discharge at any time, and the court must set the matter for a probable cause hearing; however, if a person has previously filed a petition for discharge without the Secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this Section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65, if appropriate. If the person has not previously filed a petition for discharge without the Secretary's approval, the court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65, if appropriate.

INDIANA

IOWA

IOWA CODE ANN. § 229A.2 (2012). Definitions

As used in this chapter:

1. "Agency with jurisdiction" means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. "Appropriate secure facility" means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

3. "Discharge" means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

4. "Likely to engage in predatory acts of sexual violence" means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is "likely to engage in predatory acts of sexual violence" only if the person commits a recent overt act.

5. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

6. "Predatory" means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

7. "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

8. "Safekeeper" means a person who is confined in an appropriate secure facility pursuant to this chapter but who is not subject to an order of commitment pursuant to this chapter.

9. "Sexually motivated" means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

10. “Sexually violent offense” means:

a. A violation of any provision of chapter 709.

b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

(4) Child endangerment under section 726.6, subsection 1, paragraph “e”.

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs “a” through “e”.

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

11. “Sexually violent predator” means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

12. “Transitional release” means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

IOWA CODE ANN. § 229A.4 (2012). Petition, time, contents

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

IOWA CODE ANN. § 229A.7 (2012). Trial, determination, commitment procedure, chapter 28E agreements, mistrials

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to chapter 812, or if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, 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. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence 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, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. If a person has been found not guilty by reason of insanity, the court shall determine whether the acts charged were proven as a matter of law. If as a matter of law the finding of not guilty by reason of insanity requires a finding that the underlying elements of the charged offense were proven, then no further fact-finding is required. If as a matter of law the finding of not guilty by reason of insanity does not require a finding that the underlying elements of the charged offense be proven, the case shall proceed in the same manner as if the person were found to be incompetent to stand trial as provided in subsection 1.

3. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator.

The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

4. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

5. a. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the case is before a jury, the verdict shall be unanimous that the respondent is a sexually violent predator.

b. If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be placed in a transitional release program or discharged. The determination may be appealed.

6. If the court or jury determines that the respondent is a sexually violent predator, the court shall order the respondent to submit a DNA sample for DNA profiling pursuant to section 81.4.

7. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections,

and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

8. If the court makes the determination or the jury determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 3.

IOWA CODE ANN. § 229A.8 (2012). Annual examinations and review--discharge or transitional release petitions by persons committed

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

2. A person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person but the person is not entitled to be present at the hearing, if a hearing is held.

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. (1) The court shall consider all evidence presented by both parties at the annual review. The burden is on the committed person to prove by a preponderance of the evidence that there is relevant and reliable evidence to rebut the presumption of continued commitment, which would lead a reasonable person to believe a final hearing should be held to determine either of the following:

(a) The mental abnormality of the committed person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged.

(b) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

(2) If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1), subparagraph division (a) or (b), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional release program, the state shall have the right to demand that both determinations in paragraph “e” be submitted to the court or jury.

6. The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt either of the following:

(1) The committed person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

KANSAS

KAN. STAT. ANN. § 59-29A02 (2011). Commitment of sexually violent predators; definitions

As used in this act:

(a) “Sexually violent predator” means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence.

(b) “Mental abnormality” means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

(c) “Likely to engage in repeat acts of sexual violence” means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(d) “Sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) “Sexually violent offense” means:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 21-5506, and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 21-5506, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 21-5504, and amendments thereto;

(6) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 21-5508, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 21-5508, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 21-5505, and amendments thereto;

(10) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 21-5604, and amendments thereto;

(11) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in subparagraphs (1)

through (11) or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section;

(12) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A. 21-5301, 21-5302 and 21-5303, and amendments thereto, of a sexually violent offense as defined in this subsection; or

(13) any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated.

(f) "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and includes the department of corrections, the department of social and rehabilitation services and the prisoner review board.

(g) "Person" means an individual who is a potential or actual subject of proceedings under this act.

(h) "Treatment staff" means the persons, agencies or firms employed by or contracted with the secretary to provide treatment, supervision or other services at the sexually violent predator facility.

(i) "Transitional release" means any halfway house, work release, sexually violent predator treatment facility or other placement designed to assist the person's adjustment and reintegration into the community once released from commitment.

(j) "Secretary" means the secretary of the department of social and rehabilitation services.

KAN. STAT. ANN. § 59-29A03 (2011). Notice of release of sexually violent predator by agency with jurisdiction to attorney general and multidisciplinary team, time, contents; immunity from liability; establishing a multidisciplinary team; appointment of a prosecutor's review committee; assessment of person; provisions of section are not jurisdictional

(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02 and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (d), 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305 and amendments thereto;

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and amendments thereto; or

(4) release of a person who has been found not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and the jury who returned the verdict of not guilty answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221 and amendments thereto.

(b) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection (d) of the following:

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

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

(c) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection (d), members of the prosecutor's review committee appointed as provided in subsection (e) and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

(d) The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection (a). The team, within 30 days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator, as established in K.S.A. 59-29a02 and amendments thereto. The team shall notify the attorney general of its assessment.

(e) The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection (a). The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

(f) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq., and amendments thereto.

KAN. STAT. ANN. § 59-29A04 (2011). Petition, time, contents; provisions of section are not jurisdictional; county reimbursed for costs

(a) When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (e) of K.S.A. 59-29a03, and amendments thereto, has determined that the person meets the definition of a sexually violent predator, the attorney general, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03, and amendments thereto, may file a petition in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

(b) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq., and amendments thereto.

(c) Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually violent predator shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

KAN. STAT. ANN. § 59-29A05 (2011). Determination of probable cause, hearing; evaluation; person taken into custody

(a) Upon filing of a petition under K.S.A. 59–29a04, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall order that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation ordered by the court shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

(e) The person conducting the evaluation ordered by the court pursuant to this section shall notify the detained person of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the detained person, and any conclusions drawn by the evaluator, will be disclosed to the court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under K.S.A. 59–29a01 et seq., and amendments thereto.

KAN. STAT. ANN. § 59-29A06 (2011). Trial; counsel and experts; indigent persons; jury, composition, peremptory challenges; provisions not jurisdictional

(a) Within 60 days after the completion of any hearing held pursuant to K.S.A. 59–29a05, and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced.

(b) At all stages of the proceedings under K.S.A. 59–29a01 et seq., and amendments thereto, any person subject to K.S.A. 59–29a01 et seq., and amendments thereto, shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under K.S.A. 59–29a01 et seq., and amendments thereto, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.

(c) Notwithstanding K.S.A. 60–456, and amendments thereto, at any proceeding conducted under K.S.A. 59–29a01 et seq., and amendments thereto, the parties shall be permitted to call expert witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the

expert at or before the hearing. If the facts or data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts and data need not be admissible in evidence in order for the opinion or inference to be admitted.

(d) The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22–3403, and amendments thereto. If no demand is made, the trial shall be before the court.

(e) A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general shall each have eight peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges.

(f) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59–29a01 et seq., and amendments thereto.

KAN. STAT. ANN. § 59-29A07 (2011). Determination; commitment procedure; interagency agreements; mistrials; persons committed and later taken into custody after parole, arrest or conviction, procedure; persons found incompetent to stand trial, procedure

(a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services.

(b) At all times, persons committed for control, care and treatment by the department of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the secretary of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The provisions of this subsection shall apply to any facility or building utilized in any transitional release program or conditional release program.

(c) The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be taken into custody by any law enforcement officer as defined in K.S.A. 21-5111, and amendments thereto pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to K. S.A. 59-29a01 et seq., and amendments thereto. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be excused from the provisions of K.S.A. 59-29a08, and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06, and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to K.S.A. 22-3305, and amendments thereto, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, 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. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, 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 such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court

shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

KAN. STAT. ANN. § 59-29A08 (2011). Same; annual examinations; discharge petitions by persons committed under this act over the secretary's objection at time of annual examination, notice to committed person of right, procedure; hearing; transitional release; violating conditions of release

(a) Each person committed under K.S.A. 59-29a01 et seq., and amendments thereto, shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto, shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) Nothing contained in K.S.A. 59-29a01 et seq., and amendments thereto, shall prohibit the person from otherwise petitioning the court for discharge at this hearing.

(c)(1) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

(2) The court may order and hold a hearing when:

(A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to commit a sexually violent offense and this change is permanent; and

(B) the evidence presents a change in condition since the person's last hearing.

(3) At either hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at either hearing shall be upon the state to

prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written , facsimile or electronic form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

KAN. STAT. ANN. § 59-29A10 (2011). Petition for transitional release; procedure

(a) If the secretary determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for transitional release, shall

order a hearing within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to engage in repeat acts of sexual violence.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(c) The provisions of subsections (e), (f) and (g) of K.S.A. 59-29a08 and amendments thereto shall apply to a transitional release pursuant to this section.

KAN. STAT. ANN. § 59-29A20 (2011). Bail, bond, house arrest or other release; not eligible

Any person for whom a petition pursuant to this act has been filed and is in the secure confinement of the state shall not be eligible for bail, bond, house arrest or any other measures releasing the person from the physical protective custody of the state, notwithstanding the provisions of K.S.A. 59-29a10 and amendments thereto.

KENTUCKY

LOUISIANA

MAINE

MARYLAND

MASSACHUSETTS

MASS. GEN. ANN. LAWS CH. 123A, § 1 (2012). Definitions

As used in this chapter the following words shall, except as otherwise provided, have the following meanings:--

“Agency with jurisdiction”, the agency with the authority to direct the release of a person presently incarcerated, confined or committed to the department of youth services, regardless of the reason for such incarceration, confinement or commitment, including, but not limited to a sheriff, keeper, master or superintendent of a jail, house of correction or prison, the director of a custodial facility in the department of youth services, the parole board and, where a person has been found incompetent to stand trial, a district attorney.

“Community access board”, a board consisting of five members appointed by the commissioner of correction, whose function shall be to consider a person's placement within a community access program and conduct an annual review of a person's sexual dangerousness.

“Community Access Program”, a program established pursuant to section six A that provides for a person's reintegration into the community.

“Conviction”, a conviction of or adjudication as a delinquent juvenile or a youthful offender by reason of sexual offense, regardless of the date of offense or date of conviction or adjudication.

“Mental abnormality”, a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

“Personality disorder”, a congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.

“Qualified examiner”, a physician who is licensed pursuant to section two of chapter one hundred and twelve who is either certified in psychiatry by the American Board of Psychiatry and Neurology or eligible to be so certified, or a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve; provided, however, that the examiner has had two years of experience with diagnosis or treatment of sexually aggressive offenders and is designated by the commissioner of correction. A “qualified examiner” need not be an employee of the department of correction or of any facility or institution of the department.

“Sexual offense”, includes any of the following crimes: indecent assault and battery on a child under fourteen under the provisions of section thirteen B of chapter two hundred and sixty-five; aggravated indecent assault and battery on a child under the age of 14 under section 13B 1/2 of chapter 265; a repeat offense under section 13B 3/4 of chapter 265; indecent assault and battery on a mentally retarded person under the provisions of

section thirteen F of chapter two hundred and sixty-five; indecent assault and battery on a person who has obtained the age of fourteen under the provisions of section thirteen H of chapter two hundred and sixty-five; rape under the provisions of section twenty-two of chapter two hundred and sixty-five; rape of a child under sixteen with force under the provisions of section twenty-two A of chapter two hundred and sixty-five; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under sixteen under the provisions of section twenty-three of chapter two hundred and sixty-five; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under the provisions of section twenty-four of chapter two hundred and sixty-five; assault on a child with intent to commit rape under section 24B of chapter 265; kidnapping under section 26 of said chapter 265 with intent to commit a violation of section 13B, 13B 1/2 , 13B 3/4 , 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of said chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a person under 18 into prostitution under section 4A of said chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; open and gross lewdness and lascivious behavior under section 16 of said chapter 272; incestuous intercourse under section 17 of said chapter 272 involving a person under the age of 21; dissemination or possession with the intent to disseminate to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; purchase or possession of visual material of a child depicted in sexual conduct under section 29C of said chapter 272; dissemination of visual material of a child in the state of nudity or in sexual conduct under section 30D of chapter 272; unnatural and lascivious acts with a child under the age of sixteen under the provisions of section thirty-five A of chapter two hundred and seventy-two; accosting or annoying persons of the opposite sex and lewd, wanton and lascivious speech or behavior under section 53 of said chapter 272; and any attempt to commit any of the above listed crimes under the provisions of section six of chapter two hundred and seventy-four or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority; and any other offense, the facts of which, under the totality of the circumstances, manifest a sexual motivation or pattern of conduct or series of acts of sexually-motivated offenses.

“Sexually dangerous person”, any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression

against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

MASS. GEN. ANN. LAWS CH. 123A, § 9 (2012). Petitions for examination and discharge

Any person committed to the treatment center shall be entitled to file a petition for examination and discharge once in every twelve months. Such petition may be filed by either the committed person, his parents, spouse, issue, next of kin or any friend. The department of correction may file a petition at any time if it believes a person is no longer a sexually dangerous person. A copy of any petition filed under this subsection shall be sent within fourteen days after the filing thereof to the department of the attorney general and to the district attorney for the district where the original proceedings were commenced. Said petition shall be filed in the district of the superior court department in which said person was committed. The petitioner shall have a right to a speedy hearing on a date set by the administrative justice of the superior court department. Upon the motion of the person or upon its own motion, the court shall appoint counsel for the person. The hearing may be held in any court or any place designated for such purpose by the administrative justice of the superior court department. In any hearing held pursuant to the provisions of this section, either the petitioner or the commonwealth may demand that the issue be tried by a jury. If a jury trial is demanded, the matter shall proceed according to the practice of trial in civil cases in the superior court.

The court shall issue whatever process is necessary to assure the presence in court of the committed person. The court shall order the petitioner to be examined by two qualified examiners, who shall conduct examinations, including personal interviews, of the person on whose behalf such petition is filed and file with the court written reports of their examinations and diagnoses, and their recommendations for the disposition of such person. Said reports shall be admissible in a hearing pursuant to this section. If such person refuses, without good cause, to be personally interviewed by a qualified examiner appointed pursuant to this section, such person shall be deemed to have waived his right to a hearing on the petition and the petition shall be dismissed upon motion filed by the commonwealth. The qualified examiners shall have access to all records of the person being examined. Evidence of the person's juvenile and adult court and probation records, psychiatric and psychological records, the department of correction's updated annual progress report of the petition, including all relevant materials prepared in connection with the section six A process, and any other evidence that tends to indicate that he is a sexually dangerous person shall be admissible in a hearing under this section. The chief administrative officer of the treatment center or his designee may testify at the hearing regarding the annual report and his recommendations for the disposition of the petition. Unless the trier of fact finds that such person remains a sexually dangerous person, it shall order such person to be discharged from the treatment center. Upon such discharge, notice shall be given to the chief administrative officer, to the commissioner of correction and the colonel of state police, to the attorney general, to the district attorney in the district from which the commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of

Bridgewater, the police department where such person is anticipated to take up residency, any employer of the resident, the department of criminal justice information services, and any victim of the sexual offense from which the commitment originated; provided, however, that said victim has requested notification pursuant to section three of chapter two hundred and fifty-eight B. If such victim is deceased at the time of such discharge, notice of such discharge shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

MASS. GEN. ANN. LAWS CH. 123A, § 12 (2012). Notification of persons adjudicated as delinquent juvenile or youthful offender by reason of a sexual offense; petitions for classification as sexually dangerous person; hearings

(a) Any agency with jurisdiction of a person who has ever been convicted of or adjudicated as a delinquent juvenile or a youthful offender by reason of a sexual offense as defined in section 1, regardless of the reason for the current incarceration, confinement or commitment, or who has been charged with such offense but has been found incompetent to stand trial, or who has been charged with any offense, is currently incompetent to stand trial and has previously been convicted of or adjudicated as a delinquent juvenile or a youthful offender by reason of a sexual offense, shall notify in writing the district attorney of the county where the offense occurred and the attorney general six months prior to the release of such person, except that in the case of a person who is returned to prison for no more than six months as a result of a revocation of parole or who is committed for no more than six months, such notice shall be given as soon as practicable following such person's admission to prison. In such notice, the agency with jurisdiction shall also identify those prisoners or youths who have a particularly high likelihood of meeting the criteria for a sexually dangerous person.

(b) When the district attorney or the attorney general determines that the prisoner or youth in the custody of the department of youth services is likely to be a sexually dangerous person as defined in section 1, the district attorney or the attorney general at the request of the district attorney may file a petition alleging that the prisoner or youth is a sexually dangerous person and stating sufficient facts to support such allegation in the superior court where the prisoner or youth is committed or in the superior court of the county where the sexual offense occurred.

(c) Upon the filing of a petition under this section, the court in which the petition was filed shall determine whether probable cause exists to believe that the person named in the petition is a sexually dangerous person. Such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause.

(d) At the probable cause hearing, the person named in the petition shall have the following rights:

(1) to be represented by counsel;

(2) to present evidence on such person's behalf;

(3) to cross-examine witnesses who testify against such person; and

(4) to view and copy all petitions and reports in the court file.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the court's probable cause determination, the court, upon a sufficient showing based on the evidence before the court at that time, may temporarily commit such person to the treatment center pending disposition of the petition. The person named in the petition may move the court for relief from such temporary commitment at any time prior to the probable cause determination.

MASS. GEN. ANN. LAWS CH. 123A, § 13 (2011). Temporary commitment of prisoner or youth to treatment center; right to counsel; psychological examination

(a) If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, no later than 15 days prior to the expiration of said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

(b) The court shall supply to the qualified examiners copies of any juvenile and adult court records which shall contain, if available, a history of previous juvenile and adult offenses, previous psychiatric and psychological examinations and such other information as may be pertinent or helpful to the examiners in making the diagnosis and recommendation. The district attorney or the attorney general shall provide a narrative or police reports for each sexual offense conviction or adjudication as well as any psychiatric, psychological, medical or social worker records of the person named in the petition in the district attorney's or the attorney general's possession. The agency with jurisdiction over the person named in the petition shall provide such examiners with copies of any incident reports arising out of the person's incarceration or custody.

(c) The person named in the petition shall be entitled to counsel and, if indigent, the court shall appoint an attorney. All written documentation submitted to the two qualified examiners shall also be provided to counsel for the person named in the petition and to the district attorney and attorney general.

(d) Any person subject to an examination pursuant to the provisions of this section may retain a psychologist or psychiatrist who meets the requirements of a qualified examiner, as defined in section 1, to perform an examination on his behalf. If the person named in the petition is indigent, the court shall provide for such qualified examiner.

MASS. GEN. ANN. LAWS CH. 123A, § 14 (2012). Trial by jury; right to counsel; admissibility of evidence; commitment to treatment; temporary commitments pending disposition of petitions

(a) The district attorney, or the attorney general at the request of the district attorney, may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand, in writing, that the case be tried to a jury and, upon such demand, the case shall be tried to a jury. Such petition shall be made within 14 days of the filing of the report of the two qualified examiners. If such petition is timely filed within the allowed time, the court shall notify the person named in the petition and his attorney, the district attorney and the attorney general that a trial by jury will be held within 60 days to determine whether such person is a sexually dangerous person. The trial may be continued upon motion of either party for good cause shown or by the court on its own motion if the interests of justice so require, unless the person named in the petition will be substantially prejudiced thereby. The person named in the petition shall be confined to a secure facility for the duration of the trial.

(b) The person named in the petition shall be entitled to the assistance of counsel and shall be entitled to have counsel appointed if he is indigent in accordance with section 2 of chapter 211D. In addition, the person named in the petition may retain experts or professional persons to perform an examination on his behalf. Such experts or professional persons shall be permitted to have reasonable access to such person for the purpose of the examination as well as to all relevant medical and psychological records and reports of the person named in the petition. If the person named in the petition is indigent under said section 2 of said chapter 211D, the court shall, upon such person's request, determine whether the expert or professional services are necessary and shall determine reasonable compensation for such services. If the court so determines, the court shall assist the person named in the petition in obtaining an expert or professional person to perform an examination and participate in the trial on such person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred and compensation received in the same case or for the same services from any other source. The court shall inform the person named in the petition of his rights under this section before the trial commences. The person named in the petition shall be entitled to have process issued from the court to compel the attendance of witnesses on his behalf. If such person intends to rely upon the testimony or report of his qualified examiner, the report must be filed with the court and a copy must be provided to the district attorney and attorney general no later than ten days prior to the scheduled trial.

(c) Juvenile and adult court probation records, psychiatric and psychological records and reports of the person named in the petition, including the report of any qualified examiner, as defined in section 1, and filed under this chapter, police reports relating to such person's prior sexual offenses, incident reports arising out of such person's incarceration or custody, oral or written statements prepared for and to be offered at the trial by the victims of the person who is the subject of the petition and any other evidence tending to show that such person is or is not a sexually dangerous person shall be

admissible at the trial if such written information has been provided to opposing counsel reasonably in advance of trial.

(d) If after the trial, the jury finds unanimously and beyond a reasonable doubt that the person named in the petition is a sexually dangerous person, such person shall be committed to the treatment center or, if such person is a youth who has been adjudicated as a delinquent, to the department of youth services until he reaches his twenty-first birthday, and then to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life until discharged pursuant to the provisions of section 9. The order of commitment, which shall be forwarded to the treatment center and to the appropriate agency with jurisdiction, shall become effective on the date of such person's parole or in all other cases, including persons sentenced to community parole supervision for life pursuant to section 133C of chapter 127, on the date of discharge from jail, the house of correction, prison or facility of the department of youth services.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the final judgment, the court may temporarily commit such person to the treatment center pending disposition of the petition.

MASS. GEN. ANN. LAWS CH. 123A, § 15 (2012). Competence to stand trial; hearing

If a person who has been charged with a sexual offense has been found incompetent to stand trial and his commitment is sought and probable cause has been determined to exist pursuant to section 12, the court, without a jury, shall hear evidence and determine whether the person did commit the act or acts charged. The hearing on the issue of whether the person did commit the act or acts charged shall comply with all procedures specified in section 14, except with respect to trial by jury. The rules of evidence applicable in criminal cases shall apply and all rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence the court shall make specific findings relative to whether the person did commit the act or acts charged; the extent to which the cause of the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, subject to appeal by the person named in the petition and the court may proceed to consider whether the person is a sexually dangerous person according to the procedures set forth in sections 13 and 14. Any determination made under this section shall not be admissible in any subsequent criminal proceeding.

MASS. GEN. ANN. LAWS CH. 123A, § 16 (2012). Annual reports describing treatments offered

The department of correction and the department of youth services shall annually prepare reports describing the treatment offered to each person who has been committed to the treatment center or the department of youth services as a sexually dangerous person and, without disclosing the identity of such persons, describe the treatment provided. The annual reports shall be submitted, on or before January 1, 2000 and every November 1 thereafter, to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall submit on or before December 12, 1999 its plan for the administration and management of the treatment center to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall promptly notify said committees of any modifications to said plan.

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MINN. STAT. ANN. § 253B.02 (2012). Definitions

Subdivision 1. Definitions. For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 1a. Case manager. "Case manager" has the definition given in section 245.462, subdivision 4, for persons with mental illness.

Subd. 2. Chemically dependent person. "Chemically dependent person" means any person (a) determined as being incapable of self- management or management of personal affairs by reason of the habitual and excessive use of alcohol, drugs, or other mind-altering substances; and (b) whose recent conduct as a result of habitual and excessive use of alcohol, drugs, or other mind-altering substances poses a substantial likelihood of physical harm to self or others as demonstrated by (i) a recent attempt or threat to physically harm self or others, (ii) evidence of recent serious physical problems, or (iii) a failure to obtain necessary food, clothing, shelter, or medical care. "Chemically dependent person" also means a pregnant woman who has engaged during the pregnancy in habitual or excessive use, for a nonmedical purpose, of any of the following substances or their derivatives: opium, cocaine, heroin, phencyclidine, methamphetamine, amphetamine, tetrahydrocannabinol, or alcohol.

Subd. 3. Commissioner. "Commissioner" means the commissioner of human services or the commissioner's designee.

Subd. 4. Committing court. "Committing court" means the district court where a petition for commitment was decided. In a case where commitment proceedings are commenced

following an acquittal of a crime or offense under section 611.026, "committing court" means the district court in which the acquittal took place.

Subd. 4a. Crime against the person. "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse); 609.233 (criminal neglect); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.265 (abduction); 609.27, subdivision 1, clause (1) or (2) (coercion); 609.28 (interfering with religious observance) if violence or threats of violence were used; 609.322, subdivision 1, paragraph (a), clause (2) (solicitation); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.365 (incest); 609.498, subdivision 1 (tampering with a witness); 609.50, clause (1) (obstructing legal process, arrest, and firefighting); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.595 (damage to property); and 609.72, subdivision 3 (disorderly conduct by a caregiver).

Subd. 4b. Community-based treatment. "Community-based treatment" means community support services programs defined in section 245.462, subdivision 6; day treatment services defined in section 245.462, subdivision 8; outpatient services defined in section 245.462, subdivision 21; and residential treatment services as defined in section 245.462, subdivision 23.

Subd. 4c. County of financial responsibility. (a) "County of financial responsibility" has the meaning specified in chapter 256G. This definition does not require that the person qualifies for or receives any other form of financial, medical, or social service assistance in addition to the services under this chapter. Disputes about the county of financial responsibility shall be submitted to the commissioner of human services to be determined in the manner prescribed in section 256G.09.

(b) For purposes of proper venue for filing a petition pursuant to section 253B.064, subdivision 1, paragraph (a); 253B.07, subdivision 1, paragraph (a); or 253B.185, subdivision 1, where the designated agency of a county has determined that it is the county of financial responsibility, then that county is the county of financial responsibility until a different determination is made by the appropriate county agencies or the commissioner pursuant to chapter 256G.

Subd. 5. Designated agency. "Designated agency" means an agency selected by the county board to provide the social services required under this chapter.

Subd. 6. Emergency treatment. “Emergency treatment” means the treatment of a patient pursuant to section 253B.05 which is necessary to protect the patient or others from immediate harm.

Subd. 7. Examiner. “Examiner” means a person who is knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment, and who is:

(1) a licensed physician;

(2) a licensed psychologist who has a doctoral degree in psychology or who became a licensed consulting psychologist before July 2, 1975; or

(3) an advanced practice registered nurse certified in mental health or a licensed physician assistant, except that only a physician or psychologist meeting these requirements may be appointed by the court as described by sections 253B.07, subdivision 3; 253B.092, subdivision 8, paragraph (b); 253B.17, subdivision 3; 253B.18, subdivision 2; and 253B.19, subdivisions 1 and 2, and only a physician or psychologist may conduct an assessment as described by Minnesota Rules of Criminal Procedure, rule 20.

Subd. 7a. Harmful sexual conduct. (a) “Harmful sexual conduct” means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.

(b) There is a rebuttable presumption that conduct described in the following provisions creates a substantial likelihood that a victim will suffer serious physical or emotional harm: section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), or 609.345 (criminal sexual conduct in the fourth degree). If the conduct was motivated by the person's sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal, the presumption also applies to conduct described in section 609.185 (murder in the first degree), 609.19 (murder in the second degree), 609.195 (murder in the third degree), 609.20 (manslaughter in the first degree), 609.205 (manslaughter in the second degree), 609.221 (assault in the first degree), 609.222 (assault in the second degree), 609.223 (assault in the third degree), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.365 (incest), 609.498 (tampering with a witness), 609.561 (arson in the first degree), 609.582, subdivision 1 (burglary in the first degree), 609.713 (terroristic threats), or 609.749, subdivision 3 or 5 (stalking).

Subd. 8. Head of the treatment facility. “Head of the treatment facility” means the person who is charged with overall responsibility for the professional program of care and treatment of the facility or the person's designee.

Subd. 9. Health officer. “Health officer” means:

(1) a licensed physician;

(2) a licensed psychologist;

(3) a licensed social worker;

(4) a registered nurse working in an emergency room of a hospital;

(5) a psychiatric or public health nurse as defined in section 145A.02, subdivision 18;

(6) an advanced practice registered nurse (APRN) as defined in section 148.171, subdivision 3;

(7) a mental health professional providing mental health mobile crisis intervention services as described under section 256B.0624; or

(8) a formally designated member of a prepetition screening unit established by section 253B.07.

Subd. 10. Interested person. "Interested person" means:

(1) an adult, including but not limited to, a public official, including a local welfare agency acting under section 626.5561, and the legal guardian, spouse, parent, legal counsel, adult child, next of kin, or other person designated by a proposed patient; or

(2) a health plan company that is providing coverage for a proposed patient.

Subd. 11. Licensed psychologist. "Licensed psychologist" means a person licensed by the Board of Psychology and possessing the qualifications for licensure provided in section 148.907.

Subd. 12. Licensed physician. "Licensed physician" means a person licensed in Minnesota to practice medicine or a medical officer of the government of the United States in performance of official duties.

Subd. 12a. Mental illness. "Mental illness" has the meaning given in section 245.462, subdivision 20.

Subd. 13. Person who is mentally ill. (a) A "person who is mentally ill" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:

(1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;

(2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;

(3) a recent attempt or threat to physically harm self or others; or

(4) recent and volitional conduct involving significant damage to substantial property.

(b) A person is not mentally ill under this section if the impairment is solely due to:

(1) epilepsy;

(2) developmental disability;

(3) brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or

(4) dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

Subd. 14. Developmentally disabled person. “Developmentally disabled person” means any person:

(1) who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions prior to the person's 22nd birthday; and

(2) whose recent conduct is a result of a developmental disability and poses a substantial likelihood of physical harm to self or others in that there has been (i) a recent attempt or threat to physically harm self or others, or (ii) a failure and inability to obtain necessary food, clothing, shelter, safety, or medical care.

Subd. 15. Patient. “Patient” means any person who is receiving treatment or committed under this chapter.

Subd. 16. Peace officer. “Peace officer” means a sheriff, or municipal or other local police officer, or a State Patrol officer when engaged in the authorized duties of office.

Subd. 17. Person who is mentally ill and dangerous to the public. (a) A “person who is mentally ill and dangerous to the public” is a person:

(1) who is mentally ill; and

(2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

(b) A person committed as a sexual psychopathic personality or sexually dangerous person as defined in subdivisions 18a and 18b is subject to the provisions of this chapter that apply to persons who are mentally ill and dangerous to the public.

Subd. 18. Regional treatment center. “Regional treatment center” means any state-operated facility for persons who are mentally ill, developmentally disabled, or chemically dependent under the direct administrative authority of the commissioner.

Subd. 18a. Secure treatment facility. “Secure treatment facility” means the Minnesota Security Hospital and the Minnesota sex offender program facility in Moose Lake and any portion of the Minnesota sex offender program operated by the Minnesota sex offender program at the Minnesota Security Hospital, but does not include services or programs administered by the secure treatment facility outside a secure environment.

Subd. 18b. Sexual psychopathic personality. “Sexual psychopathic personality” means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Subd. 18c. Sexually dangerous person. (a) A “sexually dangerous person” means a person who:

(1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;

(2) has manifested a sexual, personality, or other mental disorder or dysfunction; and

(3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

(b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

Subd. 19. Treatment facility. “Treatment facility” means a hospital, community mental health center, or other treatment provider qualified to provide care and treatment for persons who are mentally ill, developmentally disabled, or chemically dependent.

Subd. 20. Verdict. “Verdict” means a jury verdict or a general finding by the trial court sitting without a jury pursuant to the Rules of Criminal Procedure.

Subd. 21. Pass. “Pass” means any authorized temporary, unsupervised absence from a treatment facility.

Subd. 22. Pass plan. “Pass plan” means the part of a treatment plan for a person who has been committed as mentally ill and dangerous that specifies the terms and conditions under which the patient may be released on a pass.

Subd. 23. Pass-eligible status. “Pass-eligible status” means the status under which a person committed as mentally ill and dangerous may be released on passes after approval of a pass plan by the head of a treatment facility.

Subd. 24. Administrative restriction. “Administrative restriction” means any measure utilized by the commissioner to maintain safety and security, protect possible evidence, and prevent the continuation of suspected criminal acts. Administrative restriction does not mean protective isolation as defined by Minnesota Rules, part 9515.3090, subpart 4. Administrative restriction may include increased monitoring, program limitations, loss of privileges, restricted access to and use of possessions, and separation of a patient from the normal living environment, as determined by the commissioner or the commissioner's designee. Administrative restriction applies only to patients in a secure treatment facility as defined in subdivision 18a who:

(1) are suspected of committing a crime or charged with a crime;

(2) are the subject of a criminal investigation;

(3) are awaiting sentencing following a conviction of a crime; or

(4) are awaiting transfer to a correctional facility.

The commissioner shall establish policies and procedures according to section 246.014, paragraph (d), regarding the use of administrative restriction. The policies and procedures shall identify the implementation and termination of administrative restrictions. Use of administrative restriction and the reason associated with the use shall be documented in the patient's medical record.

Subd. 25. Safety. “Safety” means protection of persons or property from potential danger, risk, injury, harm, or damage.

Subd. 26. Security. “Security” means the measures necessary to achieve the management and accountability of patients of the facility, staff, and visitors, as well as property of the facility.

MINN. STAT. ANN. § 253B.07 (2012). Judicial commitment; preliminary procedures

Subdivision 1. Prepetition screening. (a) Prior to filing a petition for commitment of or early intervention for a proposed patient, an interested person shall apply to the designated agency in the county of financial responsibility or the county where the proposed patient is present for conduct of a preliminary investigation, except when the proposed patient has been acquitted of a crime under section 611.026 and the county attorney is required to file a petition for commitment. The designated agency shall appoint a screening team to conduct an investigation. The petitioner may not be a member of the screening team. The investigation must include:

(1) a personal interview with the proposed patient and other individuals who appear to have knowledge of the condition of the proposed patient. If the proposed patient is not interviewed, specific reasons must be documented;

(2) identification and investigation of specific alleged conduct which is the basis for application;

(3) identification, exploration, and listing of the specific reasons for rejecting or recommending alternatives to involuntary placement;

(4) in the case of a commitment based on mental illness, the following information, if it is known or available, that may be relevant to the administration of neuroleptic medications, including the existence of a declaration under section 253B.03, subdivision 6d, or a health care directive under chapter 145C or a guardian, conservator, proxy, or agent with authority to make health care decisions for the proposed patient; information regarding the capacity of the proposed patient to make decisions regarding administration of neuroleptic medication; and whether the proposed patient is likely to consent or refuse consent to administration of the medication;

(5) seeking input from the proposed patient's health plan company to provide the court with information about services the enrollee needs and the least restrictive alternatives; and

(6) in the case of a commitment based on mental illness, information listed in clause (4) for other purposes relevant to treatment.

(b) In conducting the investigation required by this subdivision, the screening team shall have access to all relevant medical records of proposed patients currently in treatment facilities. The interviewer shall inform the proposed patient that any information provided by the proposed patient may be included in the prepetition screening report and may be considered in the commitment proceedings. Data collected pursuant to this clause shall be considered private data on individuals. The prepetition screening report is not admissible as evidence except by agreement of counsel or as permitted by this chapter or the rules of court and is not admissible in any court proceedings unrelated to the commitment proceedings.

(c) The prepetition screening team shall provide a notice, written in easily understood language, to the proposed patient, the petitioner, persons named in a declaration under chapter 145C or section 253B.03, subdivision 6d, and, with the proposed patient's consent, other interested parties. The team shall ask the patient if the patient wants the notice read and shall read the notice to the patient upon request. The notice must contain information regarding the process, purpose, and legal effects of civil commitment and early intervention. The notice must inform the proposed patient that:

(1) if a petition is filed, the patient has certain rights, including the right to a court-appointed attorney, the right to request a second examiner, the right to attend hearings, and the right to oppose the proceeding and to present and contest evidence; and

(2) if the proposed patient is committed to a state regional treatment center or group home, the patient may be billed for the cost of care and the state has the right to make a claim against the patient's estate for this cost.

The ombudsman for mental health and developmental disabilities shall develop a form for the notice which includes the requirements of this paragraph.

(d) When the prepetition screening team recommends commitment, a written report shall be sent to the county attorney for the county in which the petition is to be filed. The statement of facts contained in the written report must meet the requirements of subdivision 2, paragraph (b).

(e) The prepetition screening team shall refuse to support a petition if the investigation does not disclose evidence sufficient to support commitment. Notice of the prepetition screening team's decision shall be provided to the prospective petitioner and to the proposed patient.

(f) If the interested person wishes to proceed with a petition contrary to the recommendation of the prepetition screening team, application may be made directly to the county attorney, who shall determine whether or not to proceed with the petition. Notice of the county attorney's determination shall be provided to the interested party.

(g) If the proposed patient has been acquitted of a crime under section 611.026, the county attorney shall apply to the designated county agency in the county in which the acquittal took place for a preliminary investigation unless substantially the same information relevant to the proposed patient's current mental condition, as could be obtained by a preliminary investigation, is part of the court record in the criminal proceeding or is contained in the report of a mental examination conducted in connection with the criminal proceeding. If a court petitions for commitment pursuant to the Rules of Criminal or Juvenile Procedure or a county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the prepetition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

Subd. 2. The petition. (a) Any interested person, except a member of the prepetition screening team, may file a petition for commitment in the district court of the county of financial responsibility or the county where the proposed patient is present. If the head of the treatment facility believes that commitment is required and no petition has been filed, the head of the treatment facility shall petition for the commitment of the person.

(b) The petition shall set forth the name and address of the proposed patient, the name and address of the patient's nearest relatives, and the reasons for the petition. The petition must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and the time period over which it occurred. Each factual allegation must be supported by observations of witnesses named in the petition. Petitions shall be stated in behavioral terms and shall not contain judgmental or conclusory statements.

(c) The petition shall be accompanied by a written statement by an examiner stating that the examiner has examined the proposed patient within the 15 days preceding the filing of the petition and is of the opinion that the proposed patient is suffering a designated disability and should be committed to a treatment facility. The statement shall include the reasons for the opinion. In the case of a commitment based on mental illness, the petition and the examiner's statement shall include, to the extent this information is available, a statement and opinion regarding the proposed patient's need for treatment with neuroleptic medication and the patient's capacity to make decisions regarding the administration of neuroleptic medications, and the reasons for the opinion. If use of neuroleptic medications is recommended by the treating physician, the petition for commitment must, if applicable, include or be accompanied by a request for proceedings under section 253B.092. Failure to include the required information regarding neuroleptic medications in the examiner's statement, or to include a request for an order regarding neuroleptic medications with the commitment petition, is not a basis for dismissing the commitment petition. If a petitioner has been unable to secure a statement from an examiner, the petition shall include documentation that a reasonable effort has been made to secure the supporting statement.

Subd. 2a. Petition following acquittal; referral. Following an acquittal of a person of a criminal charge under section 611.026, the petition shall be filed by the county attorney of the county in which the acquittal took place and the petition shall be filed with the court in which the acquittal took place, and that court shall be the committing court for purposes of this chapter. When a petition is filed pursuant to subdivision 2 with the court in which acquittal of a criminal charge took place, the court shall assign the judge before whom the acquittal took place to hear the commitment proceedings unless that judge is unavailable.

Subd. 2b. Apprehend and hold orders. The court may order the treatment facility to hold the person in a treatment facility or direct a health officer, peace officer, or other person to take the proposed patient into custody and transport the proposed patient to a treatment facility for observation, evaluation, diagnosis, care, treatment, and, if necessary, confinement, when:

(1) there has been a particularized showing by the petitioner that serious physical harm to the proposed patient or others is likely unless the proposed patient is immediately apprehended;

(2) the proposed patient has not voluntarily appeared for the examination or the commitment hearing pursuant to the summons; or

(3) a person is held pursuant to section 253B.05 and a request for a petition for commitment has been filed.

The order of the court may be executed on any day and at any time by the use of all necessary means including the imposition of necessary restraint upon the proposed patient. Where possible, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle. Except as provided in section 253B.045, subdivision 1a, in the case of an individual on a judicial hold due to a petition for civil commitment under section 253B.185, assignment of custody during the hold is to the commissioner of human services. The commissioner is responsible for determining the appropriate placement within a secure treatment facility under the authority of the commissioner.

Subd. 2c. Right to counsel. A patient has the right to be represented by counsel at any proceeding under this chapter. The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel. The attorney shall be appointed at the time a petition for commitment is filed. In all proceedings under this chapter, the attorney shall:

(1) consult with the person prior to any hearing;

(2) be given adequate time and access to records to prepare for all hearings;

(3) continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court; and

(4) be a vigorous advocate on behalf of the person.

Subd. 2d. Change of venue. Either party may move to have the venue of the petition changed to the district court of the Minnesota county where the person currently lives, whether independently or pursuant to a placement. The court shall grant the motion if it determines that the transfer is appropriate and is in the interests of justice. If the petition has been filed pursuant to the Rules of Criminal or Juvenile Procedure, venue may not be changed without the approval of the court in which the juvenile or criminal proceedings are pending.

Subd. 3. Examiners. After a petition has been filed, the court shall appoint an examiner. Prior to the hearing, the court shall inform the proposed patient of the right to an

independent second examination. At the proposed patient's request, the court shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation fixed by the court.

Subd. 4. Prehearing examination; notice and summons procedure. (a) A summons to appear for a prehearing examination and the commitment hearing shall be served upon the proposed patient. A plain language notice of the proceedings and notice of the filing of the petition shall be given to the proposed patient, patient's counsel, the petitioner, any interested person, and any other persons as the court directs.

(b) The prepetition screening report, the petition, and the examiner's supporting statement shall be distributed to the petitioner, the proposed patient, the patient's counsel, the county attorney, any person authorized by the patient, and any other person as the court directs.

(c) All papers shall be served personally on the proposed patient. Unless otherwise ordered by the court, the notice shall be served on the proposed patient by a nonuniformed person.

Subd. 5. Prehearing examination; report. The examination shall be held at a treatment facility or other suitable place the court determines is not likely to harm the health of the proposed patient. The county attorney and the patient's attorney may be present during the examination. Either party may waive this right. Unless otherwise agreed by the parties, a court-appointed examiner shall file the report with the court not less than 48 hours prior to the commitment hearing. The court shall ensure that copies of the examiner's report are provided to the county attorney, the proposed patient, and the patient's counsel.

Subd. 6. Repealed by Laws 1997, c. 217, art. 1, § 118.

Subd. 7. Preliminary hearing. (a) No proposed patient may be held in a treatment facility under a judicial hold pursuant to subdivision 6 longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing and determines that the standard is met to hold the person.

(b) The proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least 24 hours written notice of the preliminary hearing. The notice shall include the alleged grounds for confinement. The proposed patient shall be represented at the preliminary hearing by counsel. The court may admit reliable hearsay evidence, including written reports, for the purpose of the preliminary hearing.

(c) The court, on its motion or on the motion of any party, may exclude or excuse a proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the

record, state the behavior of the proposed patient or other circumstances which justify proceeding in the absence of the proposed patient.

(d) The court may continue the judicial hold of the proposed patient if it finds, by a preponderance of the evidence, that serious physical harm to the proposed patient or others is likely if the proposed patient is not immediately confined. If a proposed patient was acquitted of a crime against the person under section 611.026 immediately preceding the filing of the petition, the court may presume that serious physical harm to the patient or others is likely if the proposed patient is not immediately confined.

(e) Upon a showing that a person subject to a petition for commitment may need treatment with neuroleptic medications and that the person may lack capacity to make decisions regarding that treatment, the court may appoint a substitute decision-maker as provided in section 253B.092, subdivision 6. The substitute decision-maker shall meet with the proposed patient and provider and make a report to the court at the hearing under section 253B.08 regarding whether the administration of neuroleptic medications is appropriate under the criteria of section 253B.092, subdivision 7. If the substitute decision-maker consents to treatment with neuroleptic medications and the proposed patient does not refuse the medication, neuroleptic medication may be administered to the patient. If the substitute decision-maker does not consent or the patient refuses, neuroleptic medication may not be administered without a court order, or in an emergency as set forth in section 253B.092, subdivision 3.

MINN. STAT. ANN. § 253B.08 (2012). Judicial commitment; hearing procedures

Subdivision 1. Time for commitment hearing. (a) The hearing on the commitment petition shall be held within 14 days from the date of the filing of the petition, except that the hearing on a commitment petition pursuant to section 253B.185 shall be held within 90 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. The proceeding shall be dismissed if the proposed patient has not had a hearing on a commitment petition within the allowed time.

(b) The proposed patient, or the head of the treatment facility in which the person is held, may demand in writing at any time that the hearing be held immediately. Unless the hearing is held within five days of the date of the demand, exclusive of Saturdays, Sundays and legal holidays, the petition shall be automatically dismissed if the patient is being held in a treatment facility pursuant to court order. For good cause shown, the court may extend the time of hearing on the demand for an additional ten days. This paragraph does not apply to a commitment petition brought under section 253B.18 or 253B.185.

Subd. 2. Notice of hearing. The proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least five days' notice that a hearing will be held and at least two days' notice of the time and date of the hearing, except that any person may waive notice. Notice to the proposed patient may be waived by patient's counsel.

Subd. 2a. Place of hearing. The hearing shall be conducted in a manner consistent with orderly procedure. The hearing shall be held at a courtroom meeting standards prescribed by local court rule which may be at a treatment facility.

Subd. 3. Right to attend and testify. All persons to whom notice has been given may attend the hearing and, except for the proposed patient's counsel, may testify. The court shall notify them of their right to attend the hearing and to testify. The court may exclude any person not necessary for the conduct of the proceedings from the hearings except any person requested to be present by the proposed patient. Nothing in this section shall prevent the court from ordering the sequestration of any witness or witnesses other than the petitioner or the proposed patient.

Subd. 4. Repealed by Laws 1997, c. 217, art. 1, § 118.

Subd. 5. Absence permitted. (a) The court may permit the proposed patient to waive the right to attend the hearing if it determines that the waiver is freely given. At the time of the hearing the patient shall not be so under the influence of drugs, medication, or other treatment so as to be hampered in participating in the proceedings. When the licensed physician or licensed psychologist attending the patient is of the opinion that the discontinuance of drugs, medication, or other treatment is not in the best interest of the patient, the court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

(b) The court, on its own motion or on the motion of any party, may exclude or excuse a proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of the proposed patient or other circumstances justifying proceeding in the absence of the proposed patient.

Subd. 5a. Witnesses. The proposed patient or the patient's counsel and the county attorney may present and cross-examine witnesses, including examiners, at the hearing. The court may in its discretion receive the testimony of any other person. Opinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties.

Subd. 6. Repealed by Laws 1997, c. 217, art. 1, § 118.

Subd. 7. Evidence. The court shall admit all relevant evidence at the hearing. The court shall make its determination upon the entire record pursuant to the Rules of Evidence.

In any case where the petition was filed immediately following a criminal proceeding in which the proposed patient was acquitted under section 611.026, the court shall take judicial notice of the record of the criminal proceeding.

Subd. 8. Record required. The court shall keep accurate records containing, among other appropriate materials, notations of appearances at the hearing, including witnesses, motions made and their disposition, and all waivers of rights made by the parties. The court shall take and preserve an accurate stenographic record or tape recording of the proceedings.

MINN. STAT. ANN. § 253B.18 (2012). Persons who are mentally ill and dangerous to the public

Subdivision 1. Procedure. (a) Upon the filing of a petition alleging that a proposed patient is a person who is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. The court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is a person who is mentally ill and dangerous within the meaning of this section. The proposed patient has the burden of going forward in the presentation of evidence. The standard of proof remains as required by this chapter. Upon commitment, admission procedures shall be carried out pursuant to section 253B.10.

(b) Once a patient is admitted to a treatment facility pursuant to a commitment under this subdivision, treatment must begin regardless of whether a review hearing will be held under subdivision 2.

Subd. 2. Review; hearing. (a) A written treatment report shall be filed by the treatment facility with the committing court within 60 days after commitment. If the person is in the custody of the commissioner of corrections when the initial commitment is ordered under subdivision 1, the written treatment report must be filed within 60 days after the person is admitted to a secure treatment facility. The court shall hold a hearing to make a final determination as to whether the person should remain committed as a person who is mentally ill and dangerous to the public. The hearing shall be held within the earlier of 14 days of the court's receipt of the written treatment report, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties.

(b) The court may, with agreement of the county attorney and attorney for the patient:

(1) waive the review hearing under this subdivision and immediately order an indeterminate commitment under subdivision 3; or

(2) continue the review hearing for up to one year.

(c) If the court finds that the patient should be committed as a person who is mentally ill, but not as a person who is mentally ill and dangerous to the public, the court may commit the person as a person who is mentally ill and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4a to 15. Failure of the treatment facility to provide the required report at the end of the 60-day period shall not result in automatic discharge of the patient.

Subd. 3. Indeterminate commitment. If the court finds at the final determination hearing held pursuant to subdivision 2 that the patient continues to be a person who is mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time. After a final determination that a patient is a person who is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.

Subd. 4. Repealed by Laws 1997, c. 217, art. 1, § 118.

Subd. 4a. Release on pass; notification. A patient who has been committed as a person who is mentally ill and dangerous and who is confined at a secure treatment facility or has been transferred out of a state-operated services facility according to section 253B.18, subdivision 6, shall not be released on a pass unless the pass is part of a pass plan that has been approved by the medical director of the secure treatment facility. The pass plan must have a specific therapeutic purpose consistent with the treatment plan, must be established for a specific period of time, and must have specific levels of liberty delineated. The county case manager must be invited to participate in the development of the pass plan. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the local law enforcement agency where the facility is located, the county attorney and the local law enforcement agency in the location where the pass is to occur, the petitioner, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

Subd. 4b. Pass-eligible status; notification. The following patients committed to a secure treatment facility shall not be placed on pass-eligible status unless that status has been approved by the medical director of the secure treatment facility:

(a) a patient who has been committed as a person who is mentally ill and dangerous and who:

(1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;

(2) was convicted of a felony immediately prior to or during commitment as a person who is mentally ill and dangerous; or

(3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, a sexually psychopathic personality, or a sexually dangerous person.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

Subd. 4c. Special review board. (a) The commissioner shall establish one or more panels of a special review board. The board shall consist of three members experienced in the field of mental illness. One member of each special review board panel shall be a psychiatrist and one member shall be an attorney. No member shall be affiliated with the Department of Human Services. The special review board shall meet at least every six months and at the call of the commissioner. It shall hear and consider all petitions for a reduction in custody or to appeal a revocation of provisional discharge. A “reduction in custody” means transfer from a secure treatment facility, discharge, and provisional discharge. Patients may be transferred by the commissioner between secure treatment facilities without a special review board hearing.

Members of the special review board shall receive compensation and reimbursement for expenses as established by the commissioner.

(b) A petition filed by a person committed as mentally ill and dangerous to the public under this section must be heard as provided in subdivision 5 and, as applicable, subdivision 13. A petition filed by a person committed as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185, or committed as both mentally ill and dangerous to the public under this section and as a sexual psychopathic personality or as a sexually dangerous person must be heard as provided in section 253B.185, subdivision 9.

Subd. 5. Petition; notice of hearing; attendance; order. (a) A petition for a reduction in custody or revocation of provisional discharge shall be filed with the commissioner and

may be filed by the patient or by the head of the treatment facility. A patient may not petition the special review board for six months following commitment under subdivision 3 or following the final disposition of any previous petition and subsequent appeal by the patient. The medical director may petition at any time.

(b) Fourteen days prior to the hearing, the committing court, the county attorney of the county of commitment, the designated agency, interested person, the petitioner, and the petitioner's counsel shall be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing. The board shall provide the commissioner with written findings of fact and recommendations within 21 days of the hearing. The commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be mailed to every person entitled to statutory notice of the hearing within five days after it is signed. No order by the commissioner shall be effective sooner than 30 days after the order is signed, unless the county attorney, the patient, and the commissioner agree that it may become effective sooner.

(c) The special review board shall hold a hearing on each petition prior to making its recommendation to the commissioner. The special review board proceedings are not contested cases as defined in chapter 14. Any person or agency receiving notice that submits documentary evidence to the special review board prior to the hearing shall also provide copies to the patient, the patient's counsel, the county attorney of the county of commitment, the case manager, and the commissioner.

(d) Prior to the final decision by the commissioner, the special review board may be reconvened to consider events or circumstances that occurred subsequent to the hearing.

(e) In making their recommendations and order, the special review board and commissioner must consider any statements received from victims under subdivision 5a.

Subd. 5a. Victim notification of petition and release; right to submit statement. (a) As used in this subdivision:

(1) “crime” has the meaning given to “violent crime” in section 609.1095, and includes criminal sexual conduct in the fifth degree and offenses within the definition of “crime against the person” in section 253B.02, subdivision 4a, and also includes offenses listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are sexually motivated;

(2) “victim” means a person who has incurred loss or harm as a result of a crime the behavior for which forms the basis for a commitment under this section or section 253B.185; and

(3) “convicted” and “conviction” have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or section 253B.185 that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section or section 253B.185 shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition, the county attorney shall make a reasonable effort to promptly notify the victim of the resolution of the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released and that the victim has a right to submit a written statement regarding decisions of the medical director, special review board, or commissioner with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification through the Department of Corrections electronic victim notification system, or by contacting, in writing, the county attorney in the county where the conviction for the crime occurred. A request for notice under this subdivision received by the commissioner of corrections through the Department of Corrections electronic victim notification system shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph following commitment shall promptly forward the request to the commissioner of human services.

(e) The rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a “notified person” or a person “entitled to statutory notice” under subdivision 4a, 4b, or 5 or section 253B.185, subdivision 10.

Subd. 6. Transfer. A patient who is mentally ill and dangerous shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the commissioner, after a hearing and favorable recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other regional centers under the commissioner's control. In those instances where a commitment also exists to the

Department of Corrections, transfer may be to a facility designated by the commissioner of corrections.

The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment;

(3) the need for continued institutionalization;

(4) which facility can best meet the person's needs; and

(5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 7. Provisional discharge. A patient who is mentally ill and dangerous shall not be provisionally discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended: (1) whether the patient's course of hospitalization and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 8. Provisional discharge plan. A provisional discharge plan shall be developed, implemented and monitored by the designated agency in conjunction with the patient, the treatment facility and other appropriate persons. The designated agency shall, at least quarterly, review the plan with the patient and submit a written report to the commissioner and the treatment facility concerning the patient's status and compliance with each term of the plan.

Subd. 9. Provisional discharge; review. A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 15. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted.

Subd. 10. Provisional discharge; revocation. The head of the treatment facility may revoke a provisional discharge if any of the following grounds exist:

(i) the patient has departed from the conditions of the provisional discharge plan;

(ii) the patient is exhibiting signs of a mental illness which may require in-hospital evaluation or treatment; or

(iii) the patient is exhibiting behavior which may be dangerous to self or others.

Revocation shall be commenced by a notice of intent to revoke provisional discharge, which shall be served upon the patient, patient's counsel, and the designated agency. The notice shall set forth the grounds upon which the intention to revoke is based, and shall inform the patient of the rights of a patient under this chapter.

In all nonemergency situations, prior to revoking a provisional discharge, the head of the treatment facility shall obtain a report from the designated agency outlining the specific reasons for recommending the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

The patient must be provided a copy of the revocation report and informed orally and in writing of the rights of a patient under this section.

Subd. 11. Exceptions. If an emergency exists, the head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. In emergency cases, a report documenting reasons for revocation shall be submitted by the designated agency within seven days after the patient is returned to the treatment facility.

Subd. 12. Return of patient. After revocation of a provisional discharge or if the patient is absent without authorization, the head of the treatment facility may request the patient to return to the treatment facility voluntarily. The head of the facility may request a health officer, a welfare officer, or a peace officer to return the patient to the treatment facility. If a voluntary return is not arranged, the head of the treatment facility shall inform the committing court of the revocation or absence and the court shall direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a regional treatment center shall be paid by the commissioner unless paid by the patient or other persons on the patient's behalf.

Subd. 13. Appeal. Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the commissioner whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of a revocation hearing.

Subd. 14. Voluntary readmission. (a) With the consent of the head of the treatment facility, a patient may voluntarily return from provisional discharge for a period of up to 30 days, or up to 60 days with the consent of the designated agency. If the patient is not returned to provisional discharge status within 60 days, the provisional discharge is revoked. Within 15 days of receiving notice of the change in status, the patient may request a review of the matter before the special review board. The board may recommend a return to a provisional discharge status.

(b) The treatment facility is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan. All the terms and conditions of the provisional discharge order shall remain unchanged if the patient is released again.

Subd. 15. Discharge. A patient who is mentally ill and dangerous shall not be discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and commissioner shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

MINN. STAT. ANN. § 253B.185 (2012). Sexual psychopathic personality; sexually dangerous

Subdivision 1. Commitment generally. (a) Except as otherwise provided in this section, the provisions of this chapter pertaining to persons who are mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality. For purposes of this section, "sexual psychopathic personality" includes any individual committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

(b) Before commitment proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition. The county attorney may request a prepetition screening report. The petition is to be executed by a person having knowledge of the facts and filed with the district court of the county of financial responsibility or the county where the patient is present. If the patient is in the custody of the commissioner of corrections, the petition may be filed in the county where the conviction for which the person is incarcerated was entered.

(c) Upon the filing of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court shall hear the petition as provided in section 253B.18, except that section 253B.18, subdivisions 2 and 3, shall not apply.

(d) In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

(e) After a final determination that a patient is a sexually dangerous person or sexual psychopathic personality, the court shall order commitment for an indeterminate period of time and the patient shall be transferred, provisionally discharged, or discharged, only as provided in this section.

Subd. 1a. Temporary confinement. During any hearing held under this section, or pending emergency revocation of a provisional discharge, the court may order the patient or proposed patient temporarily confined in a jail or lockup but only if:

(1) there is no other feasible place of confinement for the patient within a reasonable distance;

(2) the confinement is for less than 24 hours or, if during a hearing, less than 24 hours prior to commencement and after conclusion of the hearing; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

Subd. 1b. County attorney access to data. Notwithstanding sections 144.291 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B. 171; 260B.235, subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13 or other state law, prior to filing a petition for commitment as a sexual psychopathic personality or as a sexually dangerous person, and upon notice to the proposed patient, the county attorney or the county attorney's designee may move the court for an order granting access to any records or data, to the extent it relates to the proposed patient, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition.

The court may grant the motion if: (1) the Department of Corrections refers the case for commitment as a sexual psychopathic personality or a sexually dangerous person; or (2) upon a showing that the requested category of data or records may be relevant to the determination by the county attorney or designee. The court shall decide a motion under this subdivision within 48 hours after a hearing on the motion. Notice to the proposed patient need not be given upon a showing that such notice may result in harm or harassment of interested persons or potential witnesses.

Notwithstanding any provision of chapter 13 or other state law, a county attorney considering the civil commitment of a person under this section may obtain records and data from the Department of Corrections or any probation or parole agency in this state upon request, without a court order, for the purpose of determining whether good cause

exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition. At the time of the request for the records, the county attorney shall provide notice of the request to the person who is the subject of the records.

Data collected pursuant to this subdivision shall retain their original status and, if not public, are inadmissible in any court proceeding unrelated to civil commitment, unless otherwise permitted.

Subd. 2. Transfer to correctional facility. (a) If a person has been committed under this section and later is committed to the custody of the commissioner of corrections for any reason, including but not limited to, being sentenced for a crime or revocation of the person's supervised release or conditional release under section 244.05; 609.3455, subdivision 6, 7, or 8; Minnesota Statutes 2004, section 609.108, subdivision 6; or Minnesota Statutes 2004, section 609.109, subdivision 7, the person shall be transferred to a facility designated by the commissioner of corrections without regard to the procedures provided in subdivision 11.

(b) If a person is committed under this section after a commitment to the commissioner of corrections, the person shall first serve the sentence in a facility designated by the commissioner of corrections. After the person has served the sentence, the person shall be transferred to a treatment program designated by the commissioner of human services.

Subd. 3. Not to constitute defense. The existence in any person of a condition of a sexual psychopathic personality or the fact that a person is a sexually dangerous person shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge.

Subd. 4. Statewide judicial panel; commitment proceedings. (a) The Supreme Court may establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and sexually dangerous persons. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

(b) If the Supreme Court creates the judicial panel authorized by this section, all petitions for civil commitment brought under subdivision 1 shall be filed with the supreme court instead of with the district court in the county where the proposed patient is present, notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the other applicable procedures contained in this chapter apply to commitment proceedings conducted by a judge on the panel.

Subd. 5. Financial responsibility. (a) For purposes of this subdivision, “state facility” has the meaning given in section 246.50 and also includes a Department of Corrections

facility when the proposed patient is confined in such a facility pursuant to section 253B.045, subdivision 1a.

(b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary, when a petition is filed for commitment under this section pursuant to the notice required in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of the cost of the person's confinement at a state facility or county jail, prior to commitment.

(c) The county shall submit an invoice to the state court administrator for reimbursement of the state's share of the cost of confinement.

(d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is limited to the amount appropriated for this purpose.

Subd. 6. Deleted by amendment, Laws 2010, c. 300, § 26, eff. Aug. 1, 2010.

Subd. 7. Rights of patients committed under this section. (a) The commissioner or the commissioner's designee may limit the statutory rights described in paragraph (b) for patients committed to the Minnesota sex offender program under this section or with the commissioner's consent under section 246B.02. The statutory rights described in paragraph (b) may be limited only as necessary to maintain a therapeutic environment or the security of the facility or to protect the safety and well-being of patients, staff, and the public.

(b) The statutory rights that may be limited in accordance with paragraph (a) are those set forth in section 144.651, subdivision 19, personal privacy; section 144.651, subdivision 21, private communications; section 144.651, subdivision 22, retain and use of personal property; section 144.651, subdivision 25, manage personal financial affairs; section 144.651, subdivision 26, meet with visitors and participate in groups; section 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3, receive visitors and make telephone calls. Other statutory rights enumerated by sections 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

Subd. 8. Petition and report required. (a) Within 120 days of receipt of a preliminary determination from a court under section 609.1351, or a referral from the commissioner of corrections pursuant to section 244.05, subdivision 7, a county attorney shall determine whether good cause under this section exists to file a petition, and if good cause exists, the county attorney or designee shall file the petition with the court.

(b) Failure to meet the requirements of paragraph (a) does not bar filing a petition under subdivision 1 any time the county attorney determines pursuant to subdivision 1 that good cause for such a petition exists.

Subd. 9. Petition for reduction in custody. (a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in subdivision 10 for victim

notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

(1) “committed person” means an individual committed under this section, or under this section and under section 253B.18, as mentally ill and dangerous. It does not include persons committed only as mentally ill and dangerous under section 253B.18; and

(2) “reduction in custody” means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment. A reduction in custody is considered to be a commitment proceeding under section 8.01.

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

(1) the entry of judgment in the district court of the order for commitment issued under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or

(2) any recommendation of the special review board or order of the judicial appeal panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The head of the treatment facility may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and the petitioner's counsel, and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements received from victims under subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.

Subd. 10. Victim notification of petition and release; right to submit statement. (a) As used in this subdivision:

(1) "crime" has the meaning given to "violent crime" in section 609. 1095, and includes criminal sexual conduct in the fifth degree and offenses within the definition of "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are sexually motivated;

(2) "victim" means a person who has incurred loss or harm as a result of a crime, the behavior for which forms the basis for a commitment under this section or section 253B.18; and

(3) "convicted" and "conviction" have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or section 253B.18, that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition, the county attorney shall make a reasonable effort to promptly notify the victim of the resolution of the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released and that the victim has a right to submit a written statement regarding decisions of the head of the treatment facility or designee, or special review board, with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification through the Department of Corrections electronic victim notification system, or by contacting, in writing, the county attorney in the county where the conviction for the crime occurred or where the civil commitment was filed or, following commitment, the head of the treatment facility. A request for notice under this subdivision received by the commissioner of corrections through the Department of Corrections electronic victim notification system shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph following commitment shall promptly forward the request to the commissioner of human services.

(e) Rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a "notified person" or a person "entitled to statutory notice" under subdivision 12 or 13 or section 253B.18, subdivision 4a, 4b, or 5.

Subd. 10a. Scope of community notification. (a) Notification of the public and disclosure of information under section 244.052, subdivision 4, regarding an individual who was committed under this section or Minnesota Statutes 1992, section 526.10, is as provided under section 244.052, subdivision 4, paragraphs (b), clause (3), and (g), and subdivision 4b, regardless of the individual's assigned risk level. The restrictions under section 244.052, subdivision 4, paragraph (b), clause (3), placed on disclosing information on individuals living in residential facilities do not apply to persons committed under this section or Minnesota Statutes 1992, section 526.10. The local law enforcement agency may proceed with the broadest disclosure authorized under section 244.052, subdivision 4.

(b) After four years from the date of an order for provisional discharge or discharge of civil commitment, the individual may petition the head of the treatment facility from which the individual was provisionally discharged or discharged to have the scope of notification and disclosure based solely upon the individual's assigned risk level under section 244.052.

(c) If an individual's provisional discharge is revoked for any reason, the four-year time period under paragraph (b) starts over from the date of a subsequent order for provisional discharge or discharge except that the head of the treatment facility or designee may, in the sole discretion of the head or designee, determine that the individual may petition before four years have elapsed from the date of the order of the subsequent provisional discharge or discharge and notify the individual of that determination.

(d) The head of the treatment facility shall appoint a multidisciplinary committee to review and make a recommendation on a petition made under paragraph (b). The head of the treatment facility or designee may grant or deny the petition. There is no review or appeal of the decision. If a petition is denied, the individual may petition again after two years from the date of denial.

(e) Nothing in this subdivision shall be construed to give an individual an affirmative right to petition the head of the treatment facility earlier than four years after the date of an order for provisional discharge or discharge.

(f) The head of the treatment facility shall act in place of the individual's corrections agent for the purpose of section 244.052, subdivision 3, paragraph (h), when the individual is not assigned to a corrections agent.

Subd. 11. Transfer. (a) A patient who is committed as a sexually dangerous person or sexual psychopathic personality shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other treatment programs under the commissioner's control.

(b) The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment;

(3) the need for continued institutionalization;

(4) which facility can best meet the person's needs; and

(5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 11a. Transfer; voluntary readmission to a secure facility. (a) After a patient has been transferred out of a secure facility pursuant to subdivision 11 and with the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to a secure facility operated by the Minnesota sex offender program for a period of up to 60 days.

(b) If the patient is not returned to the facility to which the patient was originally transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure facility, the transfer is revoked and the patient shall remain in a secure facility. The patient shall immediately be notified in writing of the revocation.

(c) Within 15 days of receiving notice of the revocation, the patient may petition the special review board for a review of the revocation. The special review board shall review the circumstances of the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer at the time of the revocation hearing.

(d) If the transfer has not been revoked and the patient is to be returned to the facility to which the patient was originally transferred pursuant to subdivision 11, with no substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no action by the special review board or judicial appeal panel is required.

Subd. 11b. Transfer; revocation. (a) The executive director of the Minnesota sex offender program or designee may revoke a transfer made pursuant to subdivision 11 and require a patient to return to a secure treatment facility if:

(1) remaining in a nonsecure setting will not provide a reasonable degree of safety to the patient or others; or

(2) the patient has regressed in clinical progress so that the facility to which the patient was transferred is no longer sufficient to meet the patient's needs.

(b) Upon the revocation of the transfer, the patient shall be immediately returned to a secure treatment facility. A report documenting reasons for revocation shall be issued by the executive director or designee within seven days after the patient is returned to the secure treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this subdivision. The revocation report shall be served upon the patient and the patient's counsel. The report shall outline the specific reasons for the revocation including, but not limited to, the specific facts upon which the revocation recommendation is based.

(d) A patient whose transfer is revoked must successfully re-petition the special review board and judicial appeal panel prior to being transferred out of a secure facility.

(e) Any patient aggrieved by a transfer revocation decision may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and, after considering the factors in subdivision 11, paragraph (b), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer out of a secure facility at the time of the revocation hearing.

Subd. 12. Provisional discharge. A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be provisionally discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and a recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended:

(1) whether the patient's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 13. Provisional discharge plan. A provisional discharge plan shall be developed, implemented, and monitored by the head of the treatment facility or designee in conjunction with the patient and other appropriate persons. The head of the treatment facility or designee shall, at least quarterly, review the plan with the patient and submit a written report to the designated agency concerning the patient's status and compliance with each term of the plan.

Subd. 14. Provisional discharge; review. A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 18. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted by the judicial appeal panel.

Subd. 14a. Provisional discharge; voluntary readmission. (a) With the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to the Minnesota sex offender program from provisional discharge for a period of up to 60 days.

(b) If the patient is not returned to provisional discharge status within 60 days of being readmitted to the Minnesota sex offender program, the provisional discharge is revoked. The patient shall immediately be notified of the revocation in writing. Within 15 days of receiving notice of the revocation, the patient may request a review of the matter before the special review board. The special review board shall review the circumstances of the revocation and, after applying the standards in subdivision 15, paragraph (a), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The board may recommend a return to provisional discharge status.

(c) If the provisional discharge has not been revoked and the patient is to be returned to provisional discharge, the Minnesota sex offender program is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan.

Subd. 15. Provisional discharge; revocation. (a) The head of the treatment facility may revoke a provisional discharge if either of the following grounds exist:

(1) the patient has departed from the conditions of the provisional discharge plan; or

(2) the patient is exhibiting behavior which may be dangerous to self or others.

(b) The head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. A report documenting reasons for revocation shall be issued by the head of the treatment facility within seven days after the patient is returned to the treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this section. The revocation report shall be served upon the patient, the patient's counsel, and the designated agency. The report shall outline the specific reasons for the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

(d) An individual who is revoked from provisional discharge must successfully re-petition the special review board and judicial appeal panel prior to being placed back on provisional discharge.

Subd. 16. Return of absent patient. (a) If a patient is absent without authorization, including failure to return to the custody of the Minnesota sex offender program upon the revocation of a provisional discharge, the head of the treatment facility or designee shall report the absence to the local law enforcement agency. The head of the treatment facility shall inform the committing court of the revocation or absence, and the committing court or other district court shall issue an order for the apprehension and holding of the patient by a peace officer in any jurisdiction and transportation of the patient to a facility operated by the Minnesota sex offender program or otherwise returned to the custody of the Minnesota sex offender program.

(b) An employee of the Department of Human Services may apprehend, detain, or transport an absent patient at anytime. The immunity provided under section 253B.23, subdivision 4, applies to the apprehension, detention, and transport of an absent patient.

(c) Upon receiving either the report or the apprehend and hold order in paragraph (a), a law enforcement agency shall enter information on the patient into the missing persons file of the National Crime Information Center database according to the missing persons practices. Where probable cause exists of a violation of section 609.485, a law enforcement agency shall also seek a felony arrest warrant and enter the warrant in the National Crime Information Center database.

(d) For the purposes of ensuring public safety and the apprehension of an absent patient, and notwithstanding state and federal data privacy laws, the Minnesota sex offender program shall disclose information about the absent patient relevant to the patient's apprehension and return to law enforcement agencies where the absent patient is likely to be located or likely to travel through and to agencies with statewide jurisdiction.

(e) Upon receiving either the report or the apprehend and hold order in paragraph (a), a patient shall be apprehended and held by a peace officer in any jurisdiction pending return to a facility operated by the Minnesota sex offender program or otherwise returned to the custody of the Minnesota sex offender program.

(f) A patient detained solely under this subdivision may be held in a jail or lockup only if:

(1) there is no other feasible place of detention for the patient;

(2) the detention is for less than 24 hours; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

These limitations do not apply to a patient being held for criminal prosecution, including for violation of section 609.485.

(g) If a patient is detained under this subdivision, the Minnesota sex offender program shall arrange to pick up the patient within 24 hours of the time detention was begun and shall be responsible for securing transportation for the patient to a facility operated by the Minnesota sex offender program, as determined by its executive director. The expense of detaining and transporting a patient shall be the responsibility of the Minnesota sex offender program.

(h) Immediately after an absent patient is apprehended, the Minnesota sex offender program or the law enforcement agency that apprehended or returned the absent patient shall notify the law enforcement agency that first received the absent patient report under this subdivision, and that agency shall cancel the missing persons entry from the National Crime Information Center computer.

Subd. 17. Appeal. Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of the revocation hearing.

Subd. 18. Discharge. A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Subd. 19. Aftercare services. The Minnesota sex offender program shall provide the supervision, aftercare, and case management services for a person under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999. The designated agency shall assist with client eligibility for public welfare benefits and will provide those services that are currently available exclusively through county government.

Prior to the date of discharge or provisional discharge of any patient committed as a sexual psychopathic personality or sexually dangerous person, the head of the treatment facility or designee shall establish a continuing plan of aftercare services for the patient, including a plan for medical and behavioral health services, financial sustainability, housing, social supports, or other assistance the patient needs. The Minnesota sex offender program shall provide case management services and shall assist the patient in finding employment, suitable shelter, and adequate medical and behavioral health services and otherwise assist in the patient's readjustment to the community.

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MO. ANN. STAT. § 632.480 (2012). Definitions

As used in sections 632.480 to 632.513, the following terms mean:

(1) “Agency with jurisdiction”, the department of corrections or the department of mental health;

(2) “Mental abnormality”, a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

(3) “Predatory”, acts directed towards individuals, including family members, for the primary purpose of victimization;

(4) “Sexually violent offense”, the felonies of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes, or child molestation in the first or second degree, sexual abuse, sexual assault, deviate sexual assault, or the act of abuse of a child as defined in subdivision (1) of subsection 1 of section 568.060, RSMo, which involves

sexual contact, and as defined in subdivision (2) of subsection 1 of section 568.060, RSMo;

(5) “Sexually violent predator”, any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who:

(a) Has pled guilty or been found guilty, or been found not guilty by reason of mental disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense; or

(b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

MO. ANN. STAT. § 632.483 (2012). Apparent sexually violent predator--notice to attorney general and multidisciplinary team by agency with jurisdiction--immunity from liability--assessment--prosecutor's review committee--determination

1. When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection 4 of this section. Written notice shall be given:

(1) Within three hundred sixty days prior to the anticipated release from a correctional center of the department of corrections of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than one hundred eighty days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) At any time prior to the release of a person who has been found not guilty by reason of mental disease or defect of a sexually violent offense; or

(3) At any time prior to the release of a person who was committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

2. The agency with jurisdiction shall provide the attorney general and the multidisciplinary team established in subsection 4 of this section with the following:

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

(2) Documentation of institutional adjustment and any treatment received or refused, including the Missouri sexual offender program; and

(3) A determination by either a psychiatrist or a psychologist as defined in section 632.005 as to whether the person meets the definition of a sexually violent predator.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4 of this section, members of the prosecutor's review committee appointed as provided in subsection 5 of this section and individuals contracting or appointed to perform services hereunder shall be immune from liability for any conduct performed in good faith and without gross negligence pursuant to the provisions of sections 632.480 to 632.513.

4. The director of the department of mental health and the director of the department of corrections shall establish a multidisciplinary team consisting of no more than seven members, at least one from the department of corrections and the department of mental health, and which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1 of this section. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. The prosecutors coordinators training council established pursuant to section 56.760, RSMo, shall appoint a five-member prosecutors' review committee composed of a cross section of county prosecutors from urban and rural counties. No more than three shall be from urban counties, and one member shall be the prosecuting attorney of the county in which the person was convicted or committed pursuant to chapter 552, RSMo. The committee shall review the records of each person referred to the attorney general pursuant to subsection 1 of this section. The prosecutors' review committee shall make a determination of whether or not the person meets the definition of a sexually violent predator. The determination of the prosecutors' review committee or any member pursuant to this section or section 632.484 shall not be admissible evidence in any proceeding to prove whether or not the person is a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutors' review committee.

MO. ANN. STAT. § 632.484 (2012). Sexually violent predator--petition for detention and evaluation after receipt by attorney general of written notice from law enforcement agency--order for detention and transportation to secure facility--determination by psychiatrist or psychologist--written report of results--petition pursuant to § 632.486

1. When the attorney general receives written notice from any law enforcement agency that a person, who has pled guilty to or been convicted of a sexually violent offense and who is not presently in the physical custody of an agency with jurisdiction has committed a recent overt act, the attorney general may file a petition for detention and evaluation with the probate division of the court in which the person was convicted, or committed pursuant to chapter 552, RSMo, alleging the respondent may meet the definition of a sexually violent predator and should be detained for evaluation for a period of up to nine days. The written notice shall include the previous conviction record of the person, a description of the recent overt act, if applicable, and any other evidence which tends to show the person to be a sexually violent predator. The attorney general shall provide

notice of the petition to the prosecuting attorney of the county where the petition was filed.

2. Upon a determination by the court that the person may meet the definition of a sexually violent predator, the court shall order the detention and transport of such person to a secure facility to be determined by the department of mental health. The attorney general shall immediately give written notice of such to the department of mental health.

3. Upon receiving physical custody of the person and written notice pursuant to subsection 2 of this section, the department of mental health shall, through either a psychiatrist or psychologist as defined in section 632.005, make a determination whether or not the person meets the definition of a sexually violent predator. The department of mental health shall, within seven days of receiving physical custody of the person, provide the attorney general with a written report of the results of its investigation and evaluation. The attorney general shall provide any available records of the person that are retained by the department of corrections to the department of mental health for the purposes of this section. If the department of mental health is unable to make a determination within seven days, the attorney general may request an additional detention of ninety-six hours from the court for good cause shown.

4. If the department determines that the person may meet the definition of a sexually violent predator, the attorney general shall provide the results of the investigation and evaluation to the prosecutors' review committee. The prosecutors' review committee shall, by majority vote, determine whether or not the person meets the definition of a sexually violent predator within twenty-four hours of written notice from the attorney general's office. If the prosecutors' review committee determines that the person meets the definition of a sexually violent predator, the prosecutors' review committee shall provide written notice to the attorney general of its determination. The attorney general may file a petition pursuant to section 632.486 within forty-eight hours after obtaining the results from the department.

5. For the purposes of this section “recent overt act” means any act that creates a reasonable apprehension of harm of a sexually violent nature.

MO. ANN. STAT. § 632.486 (2012). Petition in probate division of circuit court after determination of sexually violent predator by majority vote of prosecutor's review committee

When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection 5 of section 632.483 has determined by a majority vote, that the person meets the definition of a sexually violent predator, the attorney general may file a petition, in the probate division of the circuit court in which the person was convicted, or committed pursuant to chapter 552, RSMo, within forty-five days of the date the attorney general received the written notice by the agency with jurisdiction as provided in subsection 1 of section 632.483, alleging that the person is a sexually violent predator and stating sufficient facts to

support such allegation. A copy of the assessment of the multidisciplinary team must be filed with the petition.

MO. ANN. STAT. § 632.489 (2012). Probable cause determined--sexually violent predator taken into custody, when--hearing, procedure--examination by department of mental health

1. Upon filing a petition pursuant to section 632.484 or 632.486, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such probable cause determination is made, the judge shall direct that person be taken into custody and direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person under the provisions of section 632.495.

2. Within seventy-two hours after a person is taken into custody pursuant to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall:

(1) Verify the detainee's identity; and

(2) Determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

3. At the probable cause hearing as provided in subsection 2 of this section, the detained person shall have the following rights in addition to the rights previously specified:

(1) To be represented by counsel;

(2) To present evidence on such person's behalf;

(3) To cross-examine witnesses who testify against such person; and

(4) To view and copy all petitions and reports in the court file, including the assessment of the multidisciplinary team.

4. If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility, which may include a county jail as set forth in section 632.495, to house the person. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or

psychologist as defined in section 632.005 who was not a member of the multidisciplinary team that previously reviewed the person's records. In addition, such person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. Any examination shall be conducted in the facility in which the person is confined. Any examinations ordered shall be made at such time and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the person examined, the director shall determine the time, place and conditions under which the examination shall be conducted. The psychiatrist or psychologist conducting such an examination shall be authorized to interview family and associates of the person being examined, as well as victims and witnesses of the person's offense or offenses, for use in the examination unless the court for good cause orders otherwise. The psychiatrist or psychologist shall have access to all materials provided to and considered by the multidisciplinary team and to any police reports related to sexual offenses committed by the person being examined. Any examination performed pursuant to this section shall be completed and filed with the court within sixty days of the date the order is received by the director or other evaluator unless the court for good cause orders otherwise. One examination shall be provided at no charge by the department. All costs of any subsequent evaluations shall be assessed to the party requesting the evaluation.

MO. ANN. STAT. § 632.492 (2012). Trial

Within sixty days after the completion of any examination held pursuant to section 632.489, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to sections 632.480 to 632.513, any person subject to sections 632.480 to 632.513 shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. If the trial is held before a jury, the judge shall instruct the jury that if it finds that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment. If no demand for a jury is made, the trial shall be before the court. The court shall conduct all trials pursuant to this section in open court, except as otherwise provided for by the child victim witness protection law pursuant to sections 491.675 to 491.705, RSMo.

MO. ANN. STAT. § 632.495 (2012). Unanimous verdict required--offender committed to custody of department of mental health, when--contract with county jails--release, when--mistrial procedures

1. The court or jury shall determine whether, by clear and convincing evidence, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Any determination as to whether a person is a sexually violent predator may be appealed.

2. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health.

3. At all times, persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator, persons ordered to the department of mental health after a finding of probable cause under section 632.489, and persons committed for control, care and treatment by the department of mental health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the director of the department of mental health and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health shall not place or house a person ordered to the department of mental health after a determination by the court that such person may meet the definition of a sexually violent predator, a person ordered to the department of mental health after a finding of probable cause under section 632.489, or a person committed for control, care, and treatment by the department of mental health, pursuant to sections 632.480 to 632.513, with other mental health patients. The provisions of this subsection shall not apply to a person who has been conditionally released under section 632.505.

4. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

5. The department of mental health is authorized to enter into a contract agreement with one or more county jails in Missouri for the confinement of persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator or for the confinement of persons ordered to the department of mental health after a finding of probable cause under section 632.489. Such persons who are in the confinement of a county jail pursuant to a contract agreement shall be housed and managed separately from offenders in the custody of the county jail, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

6. If the court or jury is not satisfied by clear and convincing evidence that the person is a sexually violent predator, the court shall direct the person's release.

7. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. Any

subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in section 632.492.

MO. ANN. STAT. § 632.498 (2012). Annual examination of mental condition and review of status of committed person--petition for discharge--notice--hearing

1. Each person committed pursuant to sections 632.480 to 632. 513 shall have a current examination of the person's mental condition made once every year by the director of the department of mental health or designee. The yearly report shall be provided to the court that committed the person pursuant to sections 632.480 to 632.513. The court shall conduct an annual review of the status of the committed person. The court shall not conduct an annual review of a person's status if he or she has been conditionally released pursuant to section 632.505.

2. Nothing contained in sections 632.480 to 632.513 shall prohibit the person from otherwise petitioning the court for release. The director of the department of mental health shall provide the committed person who has not been conditionally released with an annual written notice of the person's right to petition the court for release over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

3. If the committed person petitions the court for conditional release over the director's objection, the petition shall be served upon the court that committed the person, the director of the department of mental health, the head of the facility housing the person, and the attorney general.

4. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines by a preponderance of the evidence that the person no longer suffers from a mental abnormality that makes the person likely to engage in acts of sexual violence if released, then the court shall set a trial on the issue.

5. The trial shall be governed by the following provisions:

(1) The committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding ;

(2) The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by a psychiatrist or psychologist not employed by the department of mental health or the department of corrections. In addition, the person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense;

(3) The burden of proof at the trial shall be upon the state to prove by clear and convincing evidence that the committed person's mental abnormality remains such that

the person is not safe to be at large and if released is likely to engage in acts of sexual violence. If a jury makes such determination, the verdict must be unanimous;

(4) If the court or jury finds that the person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence, the person shall remain in the custody of the department of mental health in a secure facility designated by the director of the department of mental health. If the court or jury finds that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the person shall be conditionally released as provided in section 632.505.

MO. ANN. STAT. § 632.501 (2012). Determination of change in mental abnormality to allow release--petition to court for release--hearing

If the director of the department of mental health determines that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the director shall authorize the person to petition the court for release. The petition shall be served upon the court that committed the person, the director of the department of mental health, the head of the facility housing the person, and the attorney general. The hearing and trial, if any, shall be conducted according to the provisions of section 632.498.

MO. ANN. STAT. § 632.504 (2012). Petition for discharge--denial without hearing if determined to be on frivolous grounds

Nothing in sections 632.480 to 632.513 shall prohibit a person from filing a petition for release pursuant to sections 632.480 to 632.513. However, if a person has previously filed a petition for release without the director's approval and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the director's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

MO. ANN. STAT. § 632.505 (2012). Change in mental abnormality, conditional release--supervision--review--fees--escape from custody

1. Upon determination by a court or jury that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the court shall place the person on conditional release pursuant to the terms of this section. The primary purpose of conditional release is to provide outpatient treatment and monitoring to prevent the person's condition from deteriorating to the degree that the person would need to be returned to a secure facility designated by the director of the department of mental health.

2. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the supervision of persons granted a conditional release by the court. In conjunction with the department of corrections, the department of mental health shall develop a conditional release plan which contains appropriate conditions for the person to be released. The plan shall address the person's need for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and drug treatment. The department of mental health shall submit the proposed plan for conditional release to the court.

3. The court shall review the plan and determine the conditions that it deems necessary to meet the person's need for treatment and supervision and to protect the safety of the public. The court shall order that the person shall be subject to the following conditions and other conditions as deemed necessary:

(1) Maintain a residence approved by the department of mental health and not change residence unless approved by the department of mental health;

(2) Maintain employment unless engaged in other structured activity approved by the department of mental health;

(3) Obey all federal and state laws;

(4) Not possess a firearm or dangerous weapon;

(5) Not be employed or voluntarily participate in an activity that involves contact with children without approval of the department of mental health;

(6) Not consume alcohol or use a controlled substance except as prescribed by a treating physician and to submit, upon request, to any procedure designed to test for alcohol or controlled substance use;

(7) Not associate with any person who has been convicted of a felony unless approved by the department of mental health;

(8) Not leave the state without permission of the department of mental health;

(9) Not have contact with specific persons, including but not limited to, the victim or victim's family, as directed by the department of mental health;

(10) Not have any contact with any child without specific approval by the department of mental health;

(11) Not possess material that is pornographic, sexually oriented, or sexually stimulating;

(12) Not enter a business providing sexually stimulating or sexually oriented entertainment;

(13) Submit to a polygraph, plethysmograph, or other electronic or behavioral monitoring or assessment;

(14) Submit to electronic monitoring which may be based on a global positioning system or other technology, which identifies and records a person's location at all times;

(15) Attend and fully participate in assessment and treatment as directed by the department of mental health;

(16) Take all psychiatric medications as prescribed by a treating physician;

(17) Authorize the department of mental health to access and obtain copies of confidential records pertaining to evaluation, counseling, treatment, and other such records and provide the consent necessary for the release of any such records;

(18) Pay fees to the department of mental health and the department of corrections to cover the costs of services and monitoring;

(19) Report to or appear in person as directed by the department of mental health and the department of corrections, and to follow all directives of such departments;

(20) Comply with any registration requirements under sections 589.400 to 589.425, RSMo; and

(21) Comply with any other conditions that the court determines to be in the best interest of the person and society.

4. The court shall provide a copy of the order containing the conditions of release to the person, the attorney general, the department of mental health, the head of the facility housing the person, and the department of corrections.

5. A person who is conditionally released and supervised by a probation and parole officer employed by the department of corrections remains under the control, care, and treatment of the department of mental health.

6. The court may modify conditions of release upon its own motion or upon the petition of the department of mental health, the department of corrections, or the person on conditional release.

7. The following provisions shall apply to violations of conditional release:

(1) If any probation and parole officer has reasonable cause to believe that a person on conditional release has violated a condition of release or that the person is no longer a proper subject for conditional release, the officer may issue a warrant for the person's arrest. The warrant shall contain a brief recitation of the facts supporting the officer's

belief. The warrant shall direct any peace officer to take the person into custody immediately so that the person can be returned to a secure facility;

(2) If the director of the department of mental health or the director's designee has reasonable cause to believe that a person on conditional release has violated a condition of release or that the person is no longer a proper subject for conditional release, the director or the director's designee may request that a peace officer take the person into custody immediately, or request that a probation and parole officer or the court which ordered the release issue a warrant for the person's arrest so that the person can be returned to a secure facility;

(3) At any time during the period of a conditional release, the court which ordered the release may issue a notice to the released person to appear to answer a charge of a violation of the terms of the release and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the released person. The warrant shall authorize the return of the released person to the custody of the court or to the custody of the director of mental health or the director's designee;

(4) No peace officer responsible for apprehending and returning the person to the facility upon the request of the director of the department of mental health or the director's designee or a probation and parole officer shall be civilly liable for apprehending or transporting such person to the facility so long as such duties were performed in good faith and without negligence;

(5) The department of mental health shall promptly notify the court that the person has been apprehended and returned to a secure facility;

(6) Within seven days of the person's return to a secure facility, the department of mental health must either request that the attorney general file a petition to revoke the person's conditional release or continue the person on conditional release;

(7) If a petition to revoke conditional release is filed, the person shall remain in custody until a hearing is held on the petition. The hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds by preponderance of the evidence that the person has violated a condition of release and that the violation of the condition was sufficient to render the person no longer suitable for conditional release, the court shall revoke the conditional release and order the person returned to a secure facility designated by the director of the department of mental health. If the court determines that revocation is not required, the court may modify or increase the conditions of release or order the person's release on the existing conditions of release;

(8) A person whose conditional release has been revoked may petition the court for subsequent release pursuant to sections 632.498, 632.501, and 632.504 no sooner than six months after the person's return to a secure facility.

8. The department of mental health may enter into agreements with the department of corrections and other departments and may enter into contracts with private entities for the purpose of supervising a person on conditional release.

9. The department of mental health and the department of corrections may require a person on conditional release to pay a reasonable fee to cover the costs of providing services and monitoring while the person is released. Each department may adopt rules with respect to establishing, waiving, collecting, and using fees. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

10. In the event a person on conditional release escapes from custody, the department of mental health shall notify the court, the department of corrections, the attorney general, the chief law enforcement officer of the county or city not within a county from where the person escaped or absconded, and any other persons necessary to protect the safety of the public or to assist in the apprehension of the person. The attorney general shall notify victims and witnesses. Upon receiving such notice, the attorney general shall file escape from commitment charges under section 575. 195, RSMo.

MO. ANN. STAT. § 632.507 (2012). Victims of sexually violent offense--notice of proceedings--rights

1. The attorney general shall in a timely manner inform victims of a sexually violent offense committed by a person:

(1) That a written notice has been given by the agency with jurisdiction to the attorney general and the multidisciplinary team pursuant to subsection 1 of section 632.483;

(2) Of the decision of the prosecutor's review committee in determining whether or not the person may be a sexually violent predator;

(3) That a petition has been filed with the circuit court pursuant to section 632.484 or 632.486;

(4) Of the outcome of a trial held pursuant to the provisions of section 632.492;

(5) Of the filing of any petition or pending proceedings held pursuant to the provisions of sections 632.498 to 632.505;

(6) Of the escape of any person committed under sections 632.480 to 632. 513.

2. Such victims shall have the right to be present at any proceeding held pursuant to the provisions of sections 632.480 to 632.513. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

MONTANA

NEBRASKA

NEB. REV. STAT. § 83-174.01 (2011). Dangerous sex offender; terms, defined

For purposes of sections 83-174 to 83-174.05:

(1) Dangerous sex offender means

(a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior or

(b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

NEB. REV. STAT. § 83-174.02 (2011). Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice

(1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 28-319.01 or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 28-319.01; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

NEB. REV. STAT. § 29-4018 (2011). Offense requiring civil commitment evaluation; sentencing court; duties

When sentencing a person convicted of an offense which requires a civil commitment evaluation pursuant to section 83-174.02, the sentencing court shall:

(1) Provide written notice to the defendant that a civil commitment evaluation is required prior to his or her release from incarceration;

(2) Require the defendant to read and sign a form stating that the defendant has been informed that a civil commitment evaluation is required prior to his or her release from incarceration; and

(3) Retain a copy of the written notification signed by the defendant.

NEB. REV. STAT. § 71-919 (2011). Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional

(1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

(3) Upon admission to a facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Department of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

NEB. REV. STAT. § 71-1204 (2011). Emergency protective custody; dangerous sex offender determination; written certificate; contents

(1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is a dangerous sex offender shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;

(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is a dangerous sex offender and the clinical basis for such opinion.

NEB. REV. STAT. § 71-1205 (2011). Person believes another to be a dangerous sex offender; notify county attorney; petition; when; contents

(1) Any person who believes that another person is a dangerous sex offender may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the county attorney shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska, if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is a dangerous sex offender;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, criminal convictions, attempts, or threats which shall be described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

NEB. REV. STAT. § 71-1206 (2011). Mental health board proceedings; commencement; petition; custody of subject; conditions; dismissal; when

(1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 71-1205 or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-919 or the administrator of the treatment facility having charge of the subject of the intention of the county attorney to file such petition. The county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 71-1205 may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is a dangerous sex offender as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of ...., Alleged to be a Dangerous Sex Offender. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 71-1208, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

NEB. REV. STAT. § 71-1208 (2011). Hearing; mental health board; duties

A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is a dangerous sex offender as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall

proceed to enter a treatment order pursuant to section 71-1209. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

NEB. REV. STAT. § 71-1209 (2011). Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is a dangerous sex offender and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01.

(2) If the mental health board finds that the subject is not a dangerous sex offender, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is a dangerous sex offender but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon

the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

NEB. REV. STAT. § 71-1211 (2011). Dangerous sex offender; board; issue warrant; contents; immunity

If the mental health board finds the subject to be a dangerous sex offender and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Sex Offender Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility.

NEB. REV. STAT. § 71-1214 (2011). Treatment order of mental health board; appeal; final order of district court; appeal

The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 71-1209 to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

NEB. REV. STAT. § 71-1215 (2011). Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced

(1) Any treatment order entered by a mental health board under section 71-1209 shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or personality disorder, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

NEB. REV. STAT. § 71-1216 (2011). Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served

The person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

NEB. REV. STAT. § 71-1217 (2011). Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when

(1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or

personality disorder or the level of risk posed to the public. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2)(a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

NEB. REV. STAT. § 71-1218 (2011). Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination

The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Sex Offender Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

NEB. REV. STAT. § 71-1219 (2011). Mental health board; review hearing; order discharge or change treatment disposition; when

(1) Upon the filing of a periodic report under section 71-1216, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 71-1221 or 71-1222, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-1216 to the satisfaction of the board that (a) the subject's mental illness or personality disorder has been successfully treated or managed to the extent that the subject no longer poses a threat to the public or (b) a less restrictive treatment alternative exists for the subject which does not increase the risk that the subject will commit another sex offense. When discharge or a change in disposition is in issue, due process protections afforded under the Sex Offender Commitment Act shall attach to the subject.

NEB. REV. STAT. § 71-1220 (2011). Regional center or treatment facility; administrator; discharge of involuntary patient; notice

When the administrator of any regional center or treatment facility for the treatment of dangerous sex offenders determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

NEB. REV. STAT. § 71-1221 (2011). Mental health board; notice of release; hearing

A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a dangerous sex offender and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Sex Offender Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

NEB. REV. STAT. § 71-1222 (2011). Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination

The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Sex Offender Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is a dangerous sex offender, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 71-1209.

NEB. REV. STAT. § 71-1225 (2011). Mental health board hearings; closed to public; exception; where conducted

All mental health board hearings under the Sex Offender Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

NEB. REV. STAT. § 71-1226 (2011). Hearings; rules of evidence applicable

The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Sex Offender Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

NEVADA

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 135-E:2 (2012). Definitions.

In this chapter:

I. "Agency with jurisdiction" means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the department of corrections, or a person who was involuntarily committed upon a finding that the person was not guilty by reason of insanity or incompetent to stand trial.

II. "Commissioner" means the commissioner of the department of corrections.

III. “Convicted of a sexually violent offense” means a person who has been:

(a) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Found incompetent to stand trial on a charge of a sexually violent offense and the court makes the finding required pursuant to RSA 135-E:5.

IV. “Court” means the superior court in the county where that person was last convicted of a sexually violent offense, or if the person is in custody on an out-of-state or federal sexually violent offense the county where the person plans to reside upon release or, if no residence in this state is planned, in the county where the facility from which the person to be released is located.

V. “Department” means the department of corrections.

VI. “Likely to engage in acts of sexual violence” means the person's propensity to commit acts of sexual violence is of such a degree that the person has serious difficulty in controlling his or her behavior as to pose a potentially serious likelihood of danger to others.

VII. “Mental abnormality” means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

VIII. “Parole board“ means the adult parole board established in RSA 651-A:3.

IX. “Person” means an individual 18 years of age or older who is a potential or actual subject of proceedings under this chapter.

X. “Sexually motivated” means that one of the purposes for which the defendant committed the crime was for sexual gratification.

XI. “Sexually violent offense” means:

(a) Capital murder in violation of RSA 630:1, I(e);

(b) First degree murder in violation of RSA 630:1-a, I(b)(1);

(c) Aggravated felonious sexual assault in violation of RSA 632-A:2;

(d) Felonious sexual assault in violation of RSA 632-A:3, III;

(e) Kidnapping in violation of RSA 633:1, I(d), where the offender confined the victim with the purpose to commit sexual assault against the victim;

(f) Burglary in violation of RSA 635:1, I, where the offender entered a building or occupied structure with the purpose to commit sexual assault;

(g) An attempt, criminal solicitation, or conspiracy, to commit any of the offenses listed above; or

(h) A violation of any other statute prohibiting the same conduct as the offenses listed above in another state, territory, or possession of the United States.

XII. "Sexually violent predator" means any person who:

(a) Has been convicted of a sexually violent offense; and

(b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

XIII. "Total confinement" means that the person is being held in any physically secure facility being operated by or contractually operated for the department of corrections. A person shall also be deemed to be in total confinement for applicability of provisions under this chapter if the person is serving an incarcerative sentence under the custody of the department of corrections. A person is not subject to total confinement if the person is subject to an incarcerative sentence or other custody in a secure facility but has contact with the community, such as through work release, a halfway house, or other supervised or unsupervised release into the community.

N.H. REV. STAT. ANN. § 135-E:3 (2012). Notice to County Attorney or Attorney General; Multidisciplinary Teams Established.

I. The commissioner of the department of health and human services, or designee, shall establish a multidisciplinary team or teams, each of which shall include, but is not limited to, 2 licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist each of whom has specialized training or experience in the area of treatment and diagnosis of sex offenders. The attorney general shall serve as legal counsel to the multidisciplinary team. The purpose of the team shall be to evaluate whether persons convicted of a sexually violent offense who are eligible for release from total confinement meet the definition of a sexually violent predator.

II. When a person who has committed a sexually violent offense is to be released from total confinement in New Hampshire, the agency with jurisdiction over the person shall give written notice to the person and the county attorney of the county where that person was last convicted of a sexually violent offense, or attorney general if the case was prosecuted by the attorney general. If the person is in custody on an out-of-state or federal sexually violent offense, the agency with jurisdiction shall give written notice to the person and the county attorney of the county where the person plans to reside upon release or, if no residence in this state is planned, the county attorney in the county where

the facility from which the person to be released is located or to the attorney general if the person has been convicted of murder. Except as provided in RSA 135-E:4, the written notice shall be given at least 9 months prior to the potential release on parole pursuant to RSA 651-A:6, I(c), except that in the case of persons who are totally confined for a period of less than 9 months, written notice shall be given as soon as practicable.

III. Within 45 days of receipt of such notice, if there is an articulable basis to believe that the person is likely to engage in acts of sexual violence, either the county attorney, attorney general, or the agency with jurisdiction may request that the multidisciplinary team assess and evaluate the person to determine whether the person is a sexually violent predator. If the county attorney, attorney general, or the agency with jurisdiction over the person to be assessed requests an assessment by the multidisciplinary team, the court shall appoint legal counsel to represent the person before any interview or personal examination of the person is conducted by the multidisciplinary team. The person to be assessed shall bear the cost of legal services associated with any proceedings under this section. If the person to be assessed is unable to pay for counsel, the court shall appoint counsel pursuant to RSA 604-A:2.

IV. If a request to assess and evaluate a person is made pursuant to paragraph III, the agency with jurisdiction shall provide the multidisciplinary team with the following information:

(a) The person's name, identifying characteristics, anticipated future residence, the type of supervision the person will receive in the community, if any, and the person's offense history;

(b) The person's criminal history, including police reports, victim statements, pre-sentence investigation reports, post-sentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents;

(c) Mental health, mental status, and medical records, including all clinical records and notes concerning the person;

(d) Documentation of institutional adjustment and any treatment received; and

(e) If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.

V. (a) The multidisciplinary team shall assess and evaluate each person referred to the team. The assessment and evaluation shall include a review of the person's institutional history and treatment record, if any, the person's criminal background, and any other factor that is relevant to the determination of whether such person is a sexually violent predator.

(b) Before concluding the evaluation, the multidisciplinary team shall offer the person being evaluated a personal interview. If the person agrees to participate in a personal

interview, at least one member of the team who is a licensed psychiatrist or psychologist shall conduct the interview. If the person refuses to fully participate in a personal interview, the multidisciplinary team may proceed with its recommendation without a personal interview of the person.

(c) Within 4 months after receiving the request for an assessment and evaluation, the department of health and human services shall provide to the county attorney or attorney general, and to the attorney representing the person, a written report of the multidisciplinary team's findings as to whether the person meets the definition of a sexually violent predator.

VI. Records, reports, and proceedings of the multidisciplinary team shall be confidential and shall be exempt from the provisions of RSA 91-A, except as provided in RSA 135-E:15.

N.H. REV. STAT. ANN. § 135-E:4 (2012). Release From Total Confinement; Transfers; Petition to Hold in Custody.

I. In the event that a person who has been convicted of a sexually violent offense is eligible for immediate release on parole pursuant to RSA 651-A:6, I(c), or upon completion of the maximum term of incarceration, the agency with jurisdiction shall provide immediate notice to the county attorney or attorney general of the person's release. The county attorney or attorney general or the agency with jurisdiction may file a petition for an emergency hearing in the superior court requesting that the person subject to immediate release be evaluated by the multidisciplinary team to determine whether the person is a sexually violent predator. The hearing shall be held within 24 hours of the filing of the petition, excluding Saturdays, Sundays, and holidays. The person shall not be released from total confinement until after the hearing has been held. At the hearing, the court shall determine whether there is probable cause to believe that the person is a sexually violent predator. If the court finds probable cause, the person shall be held in an appropriate secure facility.

II. Within 72 hours after finding probable cause, excluding Saturdays, Sundays, and holidays, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, the department of health and human services shall provide notice to the county attorney or attorney general and that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the county attorney or attorney general with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within the next business day thereafter.

III. Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, excluding Saturdays, Sundays, and holidays, the county attorney or attorney general may file a petition with the superior court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. If a

petition is not filed within the prescribed time period by the county attorney or attorney general, the person shall be immediately released. If a petition is filed pursuant to this section, the person shall be held in an appropriate secure facility for further proceedings in accordance with this chapter.

IV. A person shall be released if the multidisciplinary team or the county attorney or attorney general do not comply with the time limitations in this section. Failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the county attorney or attorney general from filing a petition against a person otherwise subject to the provisions of this chapter. Notwithstanding RSA 135-E:24, II, the court shall not consider any petition filed more than 6 months after the person's release from incarceration unless the timing of the petition is due to newly discovered material facts, which shall be alleged in the petition.

N.H. REV. STAT. ANN. § 135-E:5 (2012). Persons Found Incompetent to Stand Trial.

I. If the county attorney or attorney general seeks to civilly commit a person charged with a sexually violent offense and found incompetent to stand trial, the court shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, for proceedings pursuant to this section.

II. The court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue shall comply with all the procedures specified in this section. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged beyond a reasonable doubt. In determining whether the state has met its burden, the court shall consider the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including the person's ability to assist his or her counsel by recounting the facts, identifying witnesses, testifying in his or her own defense, or providing other relevant information or assistance to counsel or the court. If the person's incompetence substantially interferes with the person's ability to assist his or her counsel, the court shall not find the person committed the act or acts charged unless the court can conclude beyond a reasonable doubt that the acts occurred, and that the strength of the state's case, including physical evidence, eyewitness testimony, and corroborating evidence, is such that the person's limitations could not have had a substantial impact on the proceedings. If, after the conclusion of the hearing, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable to the supreme court on that issue. If the person appeals, the person shall be held in an appropriate secure facility. If the person does not appeal or if the appeal is unsuccessful, the court shall proceed as specified in this section.

III. Within 90 days after the court finds that the person committed the act or acts charged or after appeal, the multidisciplinary team shall conduct an evaluation pursuant to the procedures outlined in RSA 135-E:3 to determine whether the person meets the definition of a sexually violent predator and the department of health and human services shall

provide to the county attorney or attorney general a written report of the multidisciplinary team's findings as to whether the person meets the definition of a sexually violent predator.

N.H. REV. STAT. ANN. § 135-E:6 (2012). Petition; Contents.

If the multidisciplinary team finds the person meets the definition of a sexually violent predator, the county attorney or attorney general may file a petition within 14 days with the superior court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. At the time of the filing, and in lieu of the court issuing an order of notice, the county attorney or attorney general shall forward a copy of the petition to the person who is the subject of the petition, or to that person's attorney if one was appointed to represent the person pursuant to RSA 135-E:23. If the county attorney or attorney general does not file a petition within 14 days, and the person is otherwise subject to release, the person shall be released.

N.H. REV. STAT. ANN. § 135-E:7 (2012). Determination of Probable Cause.

I. When the county attorney or attorney general files a petition seeking to have a person declared a sexually violent predator, within 10 days of the filing of the petition, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines based on the content of the petition that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person remain in custody and be held in an appropriate secure facility for further proceedings in accordance with this chapter. The court shall schedule a preliminary pre-trial conference within 10 business days of its probable cause determination.

II. If the offender's incarcerative sentence expires before a hearing on the merits of a petition for civil commitment pursuant to this chapter, the court shall conduct a probable cause hearing within 2 days of the expiration of the person's incarcerative sentence. If the court concludes following the hearing that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person remain in custody and held in an appropriate secure facility for further proceedings in accordance with this chapter.

III. A probable cause hearing shall not be required under this section if the court has already made a probable cause determination pursuant to RSA 135-E:4, I.

N.H. REV. STAT. ANN. § 135-E:9 (2012). Trial; Procedure.

I. The person or the county attorney or attorney general has the right to demand that the trial be before a jury. A demand for a jury trial must be filed, in writing, no later than 30 days after the finding of probable cause. If no demand is made, the trial shall be to the court. At all adversarial proceedings under this chapter, the person subject to this chapter is entitled to the assistance of appointed counsel if the person is indigent.

II. Within 60 days after the court's initial determination of probable cause, or, in cases where a jury trial has been elected, 60 days after the election of a jury trial, the court shall conduct a trial to determine whether the person is a sexually violent predator.

III. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced by the delay.

IV. The person may retain experts or mental health professionals to perform an examination. If the person wishes to be examined by a professional of the person's own choice, the examiner shall be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. In the case of a person who is indigent, the court, upon the person's request, shall appoint experts or authorize other services pursuant to RSA 604-A:6. If the defendant retains an expert to perform a mental health examination, the person shall also submit to an examination by an expert of the state's choosing. If the person refuses to submit to an examination by the state's expert the court shall prohibit the person's mental health experts from testifying concerning any mental health tests, evaluations, or examinations of the person.

N.H. REV. STAT. ANN. § 135-E:10 (2012). Rules of Procedure and Evidence.

In all civil commitment proceedings for sexually violent predators under this chapter:

I. The rules of evidence, the doctor-patient privilege under RSA 329:26, privileged communications pursuant to RSA 330-A:32, or other similar statutes or rules shall not apply in proceedings under this chapter.

II. The court may consider evidence of the person's prior conduct if such evidence is relevant to the issue of whether the person is a sexually violent predator.

III. Reports by a member of the multidisciplinary team or reports provided on behalf of the multidisciplinary team shall be inadmissible in proceedings under this chapter unless the court finds the report's probative value substantially outweighs its prejudicial effect.

IV. Notwithstanding the general inapplicability of the rules of evidence, hearsay evidence is not admissible unless it falls within one of the recognized exceptions to the hearsay rule or unless the court finds that the hearsay evidence contains circumstantial guarantees of trustworthiness and the declarant is unavailable to testify at the civil commitment proceedings. Hearsay evidence shall not be used as the sole basis for committing a person under this chapter.

N.H. REV. STAT. ANN. § 135-E:11 (2012). Determination.

I. The state shall have the burden of proving by clear and convincing evidence that the person is a sexually violent predator. If the determination is made by a jury, the verdict shall be unanimous. If the jury is unable to reach a unanimous verdict, the court shall

declare a mistrial. If the court declares a mistrial, the county attorney or attorney general may refile the petition and proceed according to the provisions of this chapter. Any retrial shall occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with RSA 135-E:9, III.

II. If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the department of corrections for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person no longer poses a potentially serious likelihood of danger to others. Persons who are detained or committed under this chapter shall be held at the secure psychiatric unit of the New Hampshire state prison or other appropriate facility controlled or contracted by the department of corrections if available. An order committing a person shall be valid for up to 5 years.

III. The determination that a person is a sexually violent predator may be appealed. The public defender shall be appointed to represent the person on appeal if the person is indigent.

N.H. REV. STAT. ANN. § 135-E:12 (2012). Examinations; Release of Committed Persons.

I. Prior to the expiration of the initial commitment order or any recommittal order, the county attorney or attorney general may file a petition to recommit the person.

II. If the state petitions to renew the committal, the court shall hold a hearing. The person is entitled to be present and is entitled to the benefit of all procedural protections afforded the person at the initial trial, except for the right to a jury. The state has the right to have the person examined by professionals chosen by the state. At the hearing, the state bears the burden of proving, by clear and convincing evidence, that the person remains a sexually violent predator. Any recommittal order shall be valid for a period of up to 5 years.

N.H. REV. STAT. ANN. § 135-E:13 (2012). Authorized Petition for Release.

I. If the commissioner, or designee, at any time determines that the person is not likely to commit acts of sexual violence if discharged, the commissioner or his or her designee shall notify the court and the court shall hold a hearing. The petition shall be served upon the court and the county attorney or attorney general. The court, upon receipt of such notice, shall schedule a hearing within 60 days, unless continued for good cause.

II. The county attorney or attorney general shall represent the state, and has the right to have the person examined by professionals of the county attorney's or attorney general's choice. The state bears the burden of proving, by clear and convincing evidence, that the person remains a sexually violent predator.

N.H. REV. STAT. ANN. § 135-E:14 (2012). Petitions for Release.

A person may file a petition for discharge at any time after commitment under this chapter without the approval of the commissioner, or his or her designee. Notice of the petition shall be provided to the commissioner and to the county attorney or attorney general. After reviewing the petition filed by the person the court may request the commissioner or county attorney or attorney general to respond to the petition. The commissioner or county attorney or attorney general is not required to respond to a petition filed pursuant to this section unless ordered to do so by the court. If the court determines that appointment of counsel may assist in an appropriate resolution of the petition, and the person is indigent, the court shall appoint counsel to represent the person. If the court determines that the petition is without merit on its face, the court may deny the petition without a hearing.

N.H. REV. STAT. ANN. § 135-E:15 (2012). Release of Records.

I. In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency with jurisdiction, to a multidisciplinary team, or to the county attorney or attorney general for the purpose of meeting the notice requirements of this chapter and determining whether a person is or continues to be a sexually violent predator. Restrictions on confidential or privileged communications pursuant to RSA 329:26, RSA 330-A:32, or any other statute establishing similar restrictions on confidential or privileged communications shall not apply to releases made under this chapter. A person, agency, or entity receiving information under this section which is confidential shall maintain the confidentiality of that information. Such information does not lose its confidential status due to its release under this section.

II. Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, pre-sentence investigative reports, or victim impact statements that have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

III. A report of the multidisciplinary team shall be available to the public only after the court has determined that probable cause exists pursuant to RSA 135-E:7.

N.H. REV. STAT. ANN. § 135-E:22 (2012). Rules.

The department of health and human services, in consultation with the department, shall adopt rules, pursuant to RSA 541-A, relative to:

I. The designation of secure facilities for sexually violent predators who are subject to involuntary commitment under this chapter.

II. The components of the basic treatment plan for all committed persons under this chapter.

III. Procedures to be followed by members of the multidisciplinary teams when assessing and evaluating persons subject to this chapter.

IV. Education and training requirements for members of the multidisciplinary teams and professionals who assess and evaluate persons under this chapter.

V. The protocol for informing a person that he or she is being evaluated to determine whether he or she is a sexually violent predator under this chapter. Such protocol shall include procedures for informing the person of the right to refuse to participate in a personal interview with the multidisciplinary team or members thereof, the right to consult with counsel prior to participating in such an interview, and the right to have counsel appointed if the person is indigent.

NEW JERSEY

N.J. STAT. ANN. § 30:4-27.26 (2012). Definitions; sexually violent predator act

As used in this act:

"Agency with jurisdiction" means the agency which releases upon lawful order or authority a person who is serving a sentence or term of confinement, or is otherwise being detained or maintained in custody. This term includes the Department of Corrections or a county correctional facility, the Juvenile Justice Commission or a county juvenile detention facility, and the Department of Human Services. "Attorney General" means the Attorney General or a county prosecutor to whom the Attorney General has delegated authority under this act.

"Clinical certificate for a sexually violent predator" means a form prepared by the Division of Mental Health Services in the Department of Human Services and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined the person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is a sexually violent predator in need of involuntary commitment. The form shall also state the specific facts upon which the examining physician has based that conclusion and shall be certified in accordance with the Rules Governing the Courts of the State of New Jersey. A clinical certificate for a sexually violent predator may not be executed by an individual who is a relative by blood or marriage to the person who is being examined.

"Likely to engage in acts of sexual violence" means the propensity of a person to commit acts of sexual violence is of such a degree as to pose a threat to the health and safety of others.

"Mental abnormality" means a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence.

“Person” means an individual 18 years of age or older who is a potential or actual subject of proceedings under this act.

“Psychiatrist” means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

“Sexually violent offense” means:

(a) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses; or a criminal offense with substantially the same elements as any offense enumerated above, entered or imposed under the laws of the United States, this State or another state; or

(b) any offense for which the court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense.

“Sexually violent predator” means a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

“Treatment team” means the individuals, agencies or firms which provide treatment, supervision or other services at a facility designated for the custody, care and treatment of sexually violent predators.

N.J. STAT. ANN. § 30:4-27.27 (2012). Notice to Attorney General; confidential information required to be provided

a. When it appears that a person may meet the criteria of a sexually violent predator as defined in this act, the agency with jurisdiction shall give written notice to the Attorney General 90 days, or as soon as practicable, prior to:

(1) the anticipated release from total confinement of a person who has been convicted of or adjudicated delinquent for a sexually violent offense;

(2) any commitment status review hearing at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely, for a person who has been civilly committed pursuant to N.J.S.2C:4-8 following acquittal by reason of insanity for a sexually violent offense; or

(3) any hearing at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely, for any person civilly committed based upon a determination that the person lacked mental competence to stand trial pursuant to N.J.S.2C:4-6, if the person had been charged with a sexually violent offense.

b. When such notice is given, the agency with jurisdiction shall provide the Attorney General with all information relevant to a determination of whether the person may be a sexually violent predator, including, without regard to classification as confidential pursuant to regulations of the agency with jurisdiction, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and a statement from the agency with jurisdiction of the reasons for its determination that the person may be a sexually violent predator.

c. All information, documents and records concerning the person's mental condition or which are classified as confidential pursuant to statute or regulations of the agency with jurisdiction that are received or provided pursuant to this section shall be deemed confidential. Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the person's commitment or release, disclosure of such information, documents and records shall be limited to a professional evaluating the person's condition pursuant to this section, the Attorney General and a member of the Attorney General's staff as necessary to the performance of duties imposed pursuant to this section and, if the person is committed, to the staff at the institution providing treatment.

d. Any individual acting in good faith who has provided information relevant to a person's need for involuntary commitment under this act or has taken steps in good faith to assess a person's need of involuntary commitment under this act is immune from civil or criminal liability.

e. The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the Attorney General from initiating a proceeding against a person otherwise subject to the provisions of this act, nor do the provisions of this act in any way foreclose a proceeding under the provisions of P.L.1987, c. 116 (C.30:4-27.1 et seq.) for the involuntary commitment of any person charged with or convicted of a sexual offense.

N.J. STAT. ANN. § 30:4-27.28 (2012). Involuntary commitment proceedings; temporary commitment order

a. The Attorney General may initiate a court proceeding for involuntary commitment under this act of a person who is currently a patient in a short-term care facility, State or county psychiatric facility or special psychiatric hospital, by submitting to the court a clinical certificate for a sexually violent predator completed by a psychiatrist at the facility at which the person is a patient and the screening certificate which authorized admission of the person to the facility; but both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

b. If civil commitment is not initiated pursuant to subsection a. of this section, the Attorney General may initiate a court proceeding for the involuntary commitment of a person by the submission to the court of two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist. The person shall not be involuntarily committed pursuant to this act before the court issues a temporary court order. When the Attorney General determines that the public safety requires initiation of a proceeding pursuant to this subsection, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the Attorney General's application if the court finds that there is reasonable cause to believe that the person named in the petition is a sexually violent predator.

c. The Attorney General may initiate a court proceeding for involuntary commitment under this act of an inmate who is scheduled for release upon expiration of a maximum term of incarceration by submission to the court of two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist.

d. The Attorney General, in exercise of the State's authority as parens patriae, may initiate a court proceeding for the involuntary commitment of any person in accordance with the procedures set forth in this section by filing the required submission with the court in the jurisdiction in which the person whose commitment is sought is located.

e. Any individual who is a relative by blood or marriage of the person being examined who executes a clinical certificate for a sexually violent predator, or any individual who signs such a clinical certificate for any purpose or motive other than for purposes of care, treatment and confinement of a person in need of involuntary commitment, shall be guilty of a crime of the fourth degree.

f. Upon receiving these documents, the court shall immediately review them in order to determine whether there is probable cause to believe that the person is a sexually violent predator.

g. If the court finds that there is probable cause to believe that the person is a sexually violent predator in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing temporary commitment to a secure facility designated for the custody, care and treatment of sexually violent predators pending the final hearing. In no event shall the person be released from confinement prior to the final hearing.

h. In the case of a person committed to a short-term care facility or special psychiatric hospital, after the facility's treatment team conducts a mental and physical examination, administers appropriate treatment and prepares a discharge assessment, the facility shall transfer the person to a secure facility designated for the custody, care and treatment of sexually violent predators pending the final hearing upon providing the person, the person's guardian if any, the person's next-of-kin and the person's attorney 24 hours' advance notice of the pending transfer. Such transfer is to be accomplished in a manner

which will give the receiving facility adequate time to examine the person, become familiar with the person's behavior and condition, and prepare for the hearing.

N.J. STAT. ANN. § 30:4-27.29 (2012). Hearing regarding continuing commitment; right to counsel

a. A person who is involuntarily committed pursuant to section 5 of this act shall receive a court hearing with respect to the issue of continuing need for involuntary commitment as a sexually violent predator within 20 days from the date of the temporary commitment order.

b. The Attorney General is responsible for presenting the case for the person's involuntary commitment as a sexually violent predator to the court.

c. A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.

N.J. STAT. ANN. § 30:4-27.32 (2012). Standard for continuing commitment; discharge; conditional discharge

a. If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as a sexually violent predator, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators. The court shall also schedule a subsequent court hearing pursuant to section 12 of this act. [FN1]

b. If the court finds that the person is not a sexually violent predator, the court shall so order. A person who is serving a term of incarceration shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and any other person shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan prepared pursuant to section 14 of this act. [FN2]

c. (1) If the Department of Human Services recommends conditional discharge of the person and the court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community so as to render involuntary commitment as a sexually violent predator unnecessary for that person, the court may order that the person be conditionally discharged in accordance with such plan.

(2) Conditions imposed pursuant to this subsection shall include those recommended by the person's treatment team and developed with the participation of the person and shall be approved by the Department of Human Services. Conditions imposed on the person shall be specific and shall be for the purpose of ensuring that the person participates in necessary treatment and that the person does not represent a risk to public safety. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six

months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

(3) A designated staff member on the person's treatment team shall notify the court if the person fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a facility designated for the custody, care and treatment of sexually violent predators for an assessment. The court shall determine, in conjunction with the findings of the assessment, if the person needs to be returned to custody and, if so, the person shall be returned to the designated facility for the custody, care and treatment of sexually violent predators. The court shall hold a hearing within 20 days of the day the person was returned to custody to determine if the order of conditional discharge should be vacated.

d. Notwithstanding the provisions of this section, or any provision of section 12, 13 or 14 of this act [FN3] to the contrary, no person committed while serving a term of incarceration shall be discharged by the court prior to the date on which the person's maximum term would have expired had he not been committed. If the court determines that the person's mental condition has so changed that the person is safe to be at large, the court shall order that the person be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

e. Notwithstanding the provisions of this section, or any provision of section 12, 13 or 14 of this act to the contrary, no person committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning lack of mental competence to stand trial shall be discharged by the court unless the prosecuting attorney in the case receives prior notice and an opportunity to be heard.

N.J. STAT. ANN. § 30:4-27.33 (2012). Involuntary commitment hearings; persons lacking mental capacity to stand trial

If a person who has been civilly committed based upon a determination that the person lacked mental competence to stand trial pursuant to N.J.S.2C:4-6 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 did commit the act charged.

a. The rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to a defendant at a criminal trial, other than the right to a trial by jury and the right not to be tried while incompetent, shall apply.

b. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act charged, the extent to which the person's lack of mental competence 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, the

extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case.

c. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person did commit the act charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this act.

N.J. STAT. ANN. § 30:4-27.34 (2012). Custody, care and treatment of sexually violent predators

a. The Department of Corrections shall be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and shall provide or arrange for custodial care of persons committed pursuant to this act. Except as may be provided pursuant to subsection c. of section 9 of this act, [FN1] a person committed pursuant to this act shall be kept in a secure facility and shall be housed and managed separately from offenders in the custody of the Department of Corrections and, except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

b. The Division of Mental Health Services in the Department of Human Services shall provide or arrange for treatment for a person committed pursuant to this act. Such treatment shall be appropriately tailored to address the specific needs of sexually violent predators.

c. Appropriate representatives of the Department of Corrections and the Department of Human Services shall participate in an interagency oversight board to facilitate the coordination of the policies and procedures of the facility.

d. Notwithstanding the provisions of section 10 of P.L.1965, c.59 (C.30:4-24.2) or any other law to the contrary, the rights and rules of conduct applicable to a person subject to involuntary commitment as a sexually violent predator pursuant to P.L.1998, c.71 (C.30:4-27.24 et seq.) shall be established by regulation promulgated jointly by the Commissioner of Human Services and the Commissioner of Corrections, in consultation with the Attorney General. The regulations promulgated under this subsection shall take into consideration the rights of patients as set forth in section 10 of P.L.1965, c. 59 (C.30:4-24.2), but shall specifically address the differing needs and specific characteristics of, and treatment protocols related to, sexually violent predators. In developing these regulations, the commissioners shall give due regard to security concerns and safety of the residents, treatment staff, custodial personnel and others in and about the facility.

N.J. STAT. ANN. § 30:4-27.35 (2012). Annual court review hearing

A person committed under this act shall be afforded an annual court review hearing of the need for involuntary commitment as a sexually violent predator. The review hearing shall be conducted in the manner provided in section 7 of this act. [FN1] If the court determines at a review hearing that involuntary commitment as a sexually violent

predator shall be continued, it shall execute a new order. The court shall conduct the first review hearing 12 months from the date of the first hearing, and subsequent review hearings annually thereafter. The court may schedule additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days.

N.J. STAT. ANN. § 30:4-27.36 (2012). Recommendation and petition for discharge

a. At any time during the involuntary commitment of a person under this act, if the person's treatment team determines that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, the treatment team shall recommend that the Department of Human Services authorize the person to petition the court for discharge from involuntary commitment status. The Department of Human Services shall notify the Attorney General immediately upon providing such authorization. If a discharge plan has not been developed pursuant to section 14 of this act, [FN1] it shall be developed forthwith.

b. The person shall serve the authorized petition for discharge upon the committing court and the Attorney General. The Attorney General may obtain an independent clinical evaluation of the person, which shall be performed within 15 days of receipt by the Attorney General of the authorized petition for discharge. If, within 15 days of receipt of such authorized petition or upon completion of an independent clinical evaluation, if any, the Attorney General files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 7 of this act, [FN2] the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 9 of this act. [FN3]

c. If the person committed pursuant to this act had at the time of such commitment been confined pursuant to an order entered under N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or under N.J.S.2C:4-6 concerning lack of mental competence to stand trial, the Attorney General shall provide written notice to the prosecutor of the person's authorized petition for discharge from involuntary commitment status. If, within five days of receipt of such notice, the prosecutor files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 7 of this act, the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 9 of this act.

d. Nothing in this act shall prohibit a person from filing a petition for discharge from involuntary commitment status without authorization from the Department of Human Services. Upon receipt of such a petition, the court shall review the petition to determine:

(1) whether the petition contains facts upon which the court could find that the condition of the person has so changed from the time of the filing of the person's prior petition that a hearing is warranted, or

(2) whether the petition is supported by a professional expert evaluation or report stating that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, which evidence had not been provided to the court in its prior annual review.

If the petition fails to satisfy either of these requirements, the court shall deny the petition without a hearing.

N.J. STAT. ANN. § 30:4-27.37 (2012). Discharge plan required

A person discharged by the court shall have a discharge plan prepared by the treatment team at the facility designated for the custody, care and treatment of sexually violent predators, pursuant to this section. The treatment team shall give the person an opportunity to participate in the formulation of the discharge plan.

NEW MEXICO

NEW YORK

N.Y. MENTAL HYG. LAW § 10.03 (2012). Definition

As used in this article, the following terms shall have the following meanings:

(a) "Agency with jurisdiction" as to a person means that agency which, during the period in question, would be the agency responsible for supervising or releasing such person, and can include the department of corrections and community supervision, the office of mental health, and the office for people with developmental disabilities.

(b) "Commissioner" means the commissioner of mental health or the commissioner of developmental disabilities.

(c) "Correctional facility" means a correctional facility as that term is defined in section two of the correction law.

(d) "Counsel for respondent" means any counsel that has been retained or appointed for respondent, or if no other counsel has been retained or appointed, or prior counsel cannot be located with reasonable efforts, then the mental hygiene legal service.

(e) "Dangerous sex offender requiring confinement" means a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

(f) “Designated felony” means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

(g) “Detained sex offender” means a person who is in the care, custody, control, or supervision of an agency with jurisdiction, with respect to a sex offense or designated felony, in that the person is either:

(1) A person who stands convicted of a sex offense as defined in subdivision (p) of this section, and is currently serving a sentence for, or subject to supervision by the division of parole, whether on parole or on post-release supervision, for such offense or for a related offense;

(2) A person charged with a sex offense who has been determined to be an incapacitated person with respect to that offense and has been committed pursuant to article seven hundred thirty of the criminal procedure law, but did engage in the conduct constituting such offense;

(3) A person charged with a sex offense who has been found not responsible by reason of mental disease or defect for the commission of that offense;

(4) A person who stands convicted of a designated felony that was sexually motivated and committed prior to the effective date of this article;

(5) A person convicted of a sex offense who is, or was at any time after September first, two thousand five, a patient in a hospital operated by the office of mental health, and who was admitted directly to such facility pursuant to article nine of this title or section four hundred two of the correction law upon release or conditional release from a correctional facility, provided that the provisions of this article shall not be deemed to shorten or lengthen the time for which such person may be held pursuant to such article or section respectively; or

(6) A person who has been determined to be a sex offender requiring civil management pursuant to this article.

(h) "Licensed psychologist" means a person who is registered as a psychologist under article one hundred fifty-three of the education law.

(i) "Mental abnormality" means a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.

(j) "Psychiatric examiner" means a qualified psychiatrist or a licensed psychologist who has been designated to examine a person pursuant to this article; such designee may, but need not, be an employee of the office of mental health or the office for people with developmental disabilities.

(k) "Qualified psychiatrist" means a physician licensed to practice medicine in New York state who: (1) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or (2) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(l) "Related offenses" include any offenses that are prosecuted as part of the same criminal action or proceeding, or which are part of the same criminal transaction, or which are the bases of the orders of commitment received by the department of correctional services in connection with an inmate's current term of incarceration.

(m) "Release" and "released" means release, conditional release or discharge from confinement, from community supervision by the department of corrections and community supervision, or from an order of observation, commitment, recommitment or retention.

(n) "Respondent" means a person referred to a case review team for evaluation, a person as to whom a sex offender civil management petition has been recommended by a case review team and not yet filed, or filed by the attorney general and not dismissed, or sustained by procedures under this article.

(o) "Secure treatment facility" means a facility or a portion of a facility, designated by the commissioner, that may include a facility located on the grounds of a correctional

facility, that is staffed with personnel from the office of mental health or the office for people with developmental disabilities for the purposes of providing care and treatment to persons confined under this article, and persons defined in paragraph five of subdivision (g) of this section. Personnel from these same agencies may provide security services, provided that such staff are adequately trained in security methods and so equipped as to minimize the risk or danger of escape.

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a prostitute in the first degree as defined in section 230.06 of the penal law, incest in the second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

(q) "Sex offender requiring civil management" means a detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be either (1) a dangerous sex offender requiring confinement or (2) a sex offender requiring strict and intensive supervision.

(r) "Sex offender requiring strict and intensive supervision" means a detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement.

(s) "Sexually motivated" means that the act or acts constituting a designated felony were committed in whole or in substantial part for the purpose of direct sexual gratification of the actor.

N.Y. MENTAL HYG. LAW § 10.05 (2012). Notice and case review

(a) The commissioner of mental health, in consultation with the commissioner of the department of corrections and community supervision and the commissioner of developmental disabilities, shall establish a case review panel consisting of at least fifteen members, any three of whom may sit as a team to review a particular case. At least two members of each team shall be professionals in the field of mental health or the field of developmental disabilities, as appropriate, with experience in the treatment, diagnosis, risk assessment or management of sex offenders. To the extent practicable, the workload of the case review panel should be evenly distributed among its members. Members of the case review panel and psychiatric examiners should be free to exercise independent professional judgment without pressure or retaliation for the exercise of that judgment from any source.

(b) When it appears to an agency with jurisdiction that a person who may be a detained sex offender is nearing an anticipated release from confinement, the agency shall give notice of that fact to the attorney general and to the commissioner of mental health. When it appears to the department of corrections and community supervision that a person who

may be a detained sex offender is nearing an anticipated release from community supervision, the agency may give such notice. The agency with jurisdiction shall seek to give such notice at least one hundred twenty days prior to the person's anticipated release, but failure to give notice within such time period shall not affect the validity of such notice or any subsequent action, including the filing of a sex offender civil management petition.

(c) The notice to the attorney general and the commissioner of mental health shall, to the extent possible, contain the following:

(1) The person's name, aliases, and other identifying information such as date of birth, sex, physical characteristics, and anticipated future residence;

(2) A photograph and a set of fingerprints;

(3) A description of the act or acts that constitute the sex offense and a description of the person's criminal history, including the person's most recent sentence and any supervisory terms that it includes;

(4) The presentence reports prepared pursuant to article three hundred ninety of the criminal procedure law and other available materials concerning the person's sex offense; and

(5) A description of the person's institutional history, including his or her participation in any sex offender treatment program.

(d) The commissioner shall be authorized to designate multidisciplinary staff, including clinical and other professional personnel, to provide a preliminary review of the need for detained sex offenders to be evaluated under the procedures of this section. When the commissioner receives notice pursuant to subdivision (b) of this section, such staff shall review and assess relevant medical, clinical, criminal, or institutional records, actuarial risk assessment instruments or other records and reports, including records and reports provided by the district attorney of the county where the person was convicted, or in the case of persons determined to be incapacitated or not responsible by reason of mental disease or defect, the county where the person was charged. Upon such review and assessment, the staff shall determine whether the person who is the subject of the notice should be referred to a case review team for evaluation.

(e) If the person is referred to a case review team for evaluation, notice of such referral shall be provided to the respondent. Upon such referral, the case review team shall review relevant records, including those described in subdivisions (c) and (d) of this section, and may arrange for a psychiatric examination of the respondent. Based on the review and assessment of such information, the case review team shall consider whether the respondent is a sex offender requiring civil management.

(f) If the case review team determines that the respondent is not a sex offender requiring civil management, it shall so notify the respondent and the attorney general, and the attorney general shall not file a sex offender civil management petition.

(g) If the case review team finds that the respondent is a sex offender requiring civil management, it shall so notify the respondent and the attorney general, in writing. The written notice must be accompanied by a written report from a psychiatric examiner that includes a finding as to whether the respondent has a mental abnormality. Where the notice indicates that a respondent stands convicted of or was charged with a designated felony, it shall also include the case review team's finding as to whether the act was sexually motivated. The case review team shall provide its written notice to the attorney general and the respondent within forty-five days of the commissioner receiving the notice of anticipated release. However, failure to do so within that time period shall not affect the validity of such notice or finding or any subsequent action, including the attorney general's filing of a sex offender civil management petition subsequent to receiving the finding of the case review team.

N.Y. MENTAL HYG. LAW § 10.06 (2012). Petition and hearing

(a) If the case review team finds that a respondent is a sex offender requiring civil management, then the attorney general may file a sex offender civil management petition in the supreme court or county court of the county where the respondent is located. In determining whether to file such a petition, the attorney general shall consider information about any continuing supervision to which the respondent will be subject as a result of criminal conviction, and shall take such supervision into account when assessing the need for further management as provided by this article. If the attorney general elects to file a sex offender civil management petition, he or she shall serve a copy of the petition upon the respondent. The petition shall contain a statement or statements alleging facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management. The attorney general shall seek to file the petition within thirty days after receiving notice of the case review team's finding, but failure to do so within that period shall not affect the validity of the petition.

(b) Within ten days after the attorney general files a sex offender civil management petition, the respondent may file in the same court a notice of removal to the county of the underlying criminal sex offense charges. The attorney general may, in the court in which the petition is pending, move for a retention of venue. Such motion shall be made within five days after the attorney general is served with a notice of removal, which time may be extended for good cause shown. The court shall grant the motion if the attorney general shows good cause for such retention. If the attorney general does not timely move for a retention of venue, or does so move and the motion is denied, then the proceedings shall be transferred to the county of the underlying criminal sex offense charges. If the respondent does not timely file a notice of removal, or the attorney general moves for retention of venue and such motion is granted, then the proceedings shall continue where the petition was filed.

(c) Promptly upon the filing of a sex offender civil management petition, or upon a request to the court by the attorney general for an order pursuant to subdivision (d) of this section that a respondent submit to an evaluation by a psychiatric examiner, whichever occurs earlier, the court shall appoint counsel in any case where the respondent is financially unable to obtain counsel. The court shall appoint the mental hygiene legal service if possible. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article. Counsel for the respondent shall be provided with copies of the written notice made by the case review team, the petition and the written reports of the psychiatric examiners.

(d) At any time after receiving notice pursuant to subdivision (b) of section 10.05 of this article, and prior to trial, the attorney general may request the court in which the sex offender civil management petition could be filed, or is pending, to order the respondent to submit to an evaluation by a psychiatric examiner. Upon such a request, the court shall order that the respondent submit to an evaluation by a psychiatric examiner chosen by the attorney general and, if the respondent is not represented by counsel, the court shall appoint counsel for the respondent. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the attorney general, to counsel for the respondent, and to the court.

(e) At any time after the filing of a sex offender civil management petition, and prior to trial, the respondent may request the court in which the petition is pending to order that he or she be evaluated by a psychiatric examiner. Upon such a request, the court shall order an evaluation by a psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the respondent or counsel for the respondent, to the attorney general, and to the court.

(f) Notwithstanding any other provision of this article, if it appears that the respondent may be released prior to the time the case review team makes a determination, and the attorney general determines that the protection of public safety so requires, the attorney general may file a securing petition at any time after receipt of written notice pursuant to subdivision (b) of section 10.05 of this article. In such circumstance, there shall be no probable cause hearing until such time as the case review team may find that the respondent is a sex offender requiring civil management. If the case review team determines that the respondent is not a sex offender requiring civil management, the attorney general shall so advise the court and the securing petition shall be dismissed.

(g) Within thirty days after the sex offender civil management petition is filed, or within such longer period as to which the respondent may consent, the supreme court or county court before which the petition is pending shall conduct a hearing without a jury to

determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management.

(h) If the respondent was released subsequent to notice under subdivision (b) of section 10.05 of this article, and is therefore at liberty when the petition is filed, the court shall order the respondent's return to confinement, observation, commitment, recommitment or retention, as applicable, for purposes of the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's return. If the respondent is not at liberty when the petition is filed, but becomes eligible to be released prior to the probable cause hearing, the court shall order the stay of such release pending the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's anticipated release date. In either case, the release of the respondent shall be in accordance with other provisions of law if the hearing does not commence within such period of seventy-two hours, unless: (i) the failure to commence the hearing was due to the respondent's request, action or condition, or occurred with his or her consent; or (ii) the court is satisfied that the attorney general has shown good cause why the hearing could not so commence. Any failure to commence the probable cause hearing within the time periods specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the probable cause determination.

(i) The provisions of subdivision (g) of section 10.08 of this article shall be applicable to the hearing. The hearing should be completed in one session but, in the interest of justice, may be adjourned by the court.

(j) The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the probable cause hearing, whenever it appears that: (i) the respondent stands convicted of such offense; (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense; or (iii) the respondent was indicted for such offense by a grand jury but found to be incompetent to stand trial for such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether there is probable cause to believe that the commission of such offense was sexually motivated shall be determined by the court.

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility may, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of

corrections and community supervision pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

(l)(1) If a respondent who is transferred to a secure treatment facility pursuant to subdivision (k) of this section, has not yet reached his or her maximum expiration date on the underlying determinate or indeterminate sentence of imprisonment, is significantly disruptive of the treatment program at such secure treatment facility, the person in charge of treatment programs at such facility may initiate a proceeding to obtain an order that the respondent shall be transferred to the custody of the department of corrections and community supervision for such conduct.

(2) Such a proceeding shall be initiated by a written notice served upon the respondent, and provided by mail to his or her counsel (or by electronic mail or facsimile to a destination identified by such counsel for such purpose). Such notice shall identify in detail the dates, times and nature of the alleged misconduct pursuant to paragraph one of this subdivision, the possible sanctions, and the date, time and location of the hearing.

(3) A hearing on the allegations shall be held no less than ten days nor more than sixty days after such notice is served on the respondent and provided to his or her counsel. The hearing shall be conducted by the director of the secure treatment facility, or his or her designee. The respondent may be represented by counsel. Evidence shall be introduced through witnesses and documents, if any, and both the person in charge of the treatment program presenting the case and the respondent may call and cross-examine witnesses and present documentary evidence relevant to the question of whether the respondent has been significantly disruptive of the treatment program. The presiding officer may accept such evidence without applying formal state or federal rules of evidence. The hearing shall be recorded or a stenographic record of the proceeding shall be kept. When hearing the matter and, if the allegations are sustained, the presiding officer shall consider the respondent's mental health condition and its effect, if any, on his or her conduct.

(4) At the conclusion of the hearing, if the presiding officer is satisfied that there is a preponderance of evidence that the respondent has been significantly disruptive of the treatment program at the secure treatment facility, the presiding officer shall so find. In such event, the presiding officer may order the respondent's transfer back to the custody of the department of corrections and community supervision for a period of up to six months, provided however, that when such respondent reaches the maximum expiration date of his or her underlying sentence he or she shall be returned to a secure treatment facility unless he or she consents in writing as provided in subdivision (k) of this section to remaining in the custody of the department of corrections and community supervision and provided further that he or she shall be returned to a secure treatment facility if the final order issued pursuant to subdivision (f) of section 10.07 of this article requires placement in a secure treatment facility.

(5) At the conclusion of the hearing, the presiding officer shall prepare a written statement, to be made available to the respondent and his or her counsel, indicating the evidence relied on, the reasons for the determination and specifying the procedures and time frame for administrative appeal to the commissioner. The determination may be appealed to the commissioner in accordance with procedures established in writing by the department. The respondent shall be given at least ten days after notice of the determination has been served and the transcript or recording of the proceeding (with appropriate access equipment) has been provided to perfect the appeal. The respondent may be represented by counsel on the administrative appeal.

N.Y. MENTAL HYG. LAW § 10.07 (2012). Trial

(a) Within sixty days after the court determines, pursuant to subdivision (k) of section 10.06 of this article, that there is probable cause to believe that the respondent is a sex offender requiring civil management, the court shall conduct a jury trial to determine whether the respondent is a detained sex offender who suffers from a mental abnormality. The trial shall be held before the same court that conducted the probable cause hearing unless either the attorney general or counsel for the respondent has moved for a change of venue and the motion has been granted by the court.

(b) The provisions of article forty-one of the civil practice law and rules shall apply to the formation and conduct of jury trial under this section, except that the provisions of the following sections of the criminal procedure law shall govern to the extent that the provisions of article forty-one of the civil practice law and rules are inconsistent therewith: sections 270.05, 270.10, 270.15, 270.20, subdivision one of section 270.25, and subdivision one of section 270.35 (except for the provisions thereof requiring consent for the replacement of a discharged juror with an alternate). Each side shall have ten peremptory challenges for the regular jurors and two for each alternate juror to be selected. The right to a trial by jury may be waived by the respondent, and upon such waiver, the court shall conduct a trial in accordance with article forty-two of the civil practice law and rules, excluding provisions for decision-making by referees.

(c) The provisions of subdivision (g) of section 10.08 of this article and article forty-five of the civil practice law and rules shall be applicable to trials conducted pursuant to this section. The jury may hear evidence of the degree to which the respondent cooperated with the psychiatric examination. If the court finds that the respondent refused to submit to a psychiatric examination pursuant to this article, upon request it shall so instruct the jury. The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the trial, whenever it is shown that: (i) the respondent stands convicted of such offense; or (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether such offense was sexually motivated shall be determined by the jury.

(d) The jury, or the court if a jury trial is waived, shall determine by clear and convincing evidence whether the respondent is a detained sex offender who suffers from a mental

abnormality. The burden of proof shall be on the attorney general. A determination, if made by the jury, must be by unanimous verdict. In charging the jury, the court's instructions shall include the admonishment that the jury may not find solely on the basis of the respondent's commission of a sex offense that the respondent is a detained sex offender who suffers from a mental abnormality. In the case of a respondent committed pursuant to article seven hundred thirty of the criminal procedure law for a sex offense, the attorney general shall have the burden of proving by clear and convincing evidence that the respondent did engage in the conduct constituting such offense.

(e) If the jury unanimously, or the court if a jury trial is waived, determines that the attorney general has not sustained his or her burden of establishing that the respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition and the respondent shall be released if and as warranted by other provisions of law. If the jury is unable to render a unanimous verdict, the court shall continue any commitment order previously issued and schedule a second trial to be held within sixty days in accordance with the provisions of subdivision (a) of this section. If the jury in such second trial is unable to render a unanimous verdict as to whether the respondent is a detained sex offender who suffers from a mental abnormality, the court shall dismiss the petition.

(f) If the jury, or the court if a jury trial is waived, determines that the respondent is a detained sex offender who suffers from a mental abnormality, then the court shall consider whether the respondent is a dangerous sex offender requiring confinement or a sex offender requiring strict and intensive supervision. The parties may offer additional evidence, and the court shall hear argument, as to that issue. If the court finds by clear and convincing evidence that the respondent has a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the respondent is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility, then the court shall find the respondent to be a dangerous sex offender requiring confinement. In such case, the respondent shall be committed to a secure treatment facility for care, treatment, and control until such time as he or she no longer requires confinement. If the court does not find that the respondent is a dangerous sex offender requiring confinement, then the court shall make a finding of disposition that the respondent is a sex offender requiring strict and intensive supervision, and the respondent shall be subject to a regimen of strict and intensive supervision and treatment in accordance with section 10.11 of this article. In making a finding of disposition, the court shall consider the conditions that would be imposed upon the respondent if subject to a regimen of strict and intensive supervision, and all available information about the prospects for the respondent's possible re-entry into the community.

N.Y. MENTAL HYG. LAW § 10.08 (2012). Procedures under this article

(a) When a respondent submits to an examination pursuant to an order issued in accordance with this article, any statement made by the respondent for the purpose of the examination shall be kept confidential in accordance with the provisions of section 33.13 of this chapter and shall be inadmissible in evidence against him or her in any criminal

action or proceeding, provided that such statements may be used in proceedings under this article.

(b) A psychiatric examiner chosen by the attorney general shall have reasonable access to the respondent for the purpose of such examination, as well as to the respondent's relevant medical, clinical, criminal or other records and reports. A psychiatric examiner chosen by or appointed on behalf of the respondent shall have reasonable access to the respondent's relevant medical, clinical or criminal records and reports, except that such psychiatric examiner shall not have access without court order and for good cause shown to the name of, address of, or any other identifying information about the victim or victims. To the extent possible, such identifying information should be redacted so as to provide the examiner with access to the balance of the document. In conducting examinations under this article, psychiatric examiners may employ any method that is accepted by the medical profession for the examination of persons alleged to be suffering from a mental disability or mental abnormality.

(c) Notwithstanding any other provision of law, the commissioner, the case review panel and the attorney general shall be entitled to request from any agency, office, department or other entity of the state, and such entity shall be authorized to provide upon such request, any and all records and reports relating to the respondent's commission or alleged commission of a sex offense, the institutional adjustment and any treatment received by such respondent, and any medical, clinical or other information relevant to a determination of whether the respondent is a sex offender requiring civil management. Otherwise confidential materials obtained for purposes of proceedings pursuant to this article shall not be further disseminated or otherwise used except for such purposes. Nothing in this article shall be construed to restrict any right of a respondent to obtain his or her own records pursuant to other provisions of law.

(d) The attorney general shall make records in his or her possession and relevant to the respondent available for inspection or copying by counsel for the respondent for purposes of hearing, trial, and appeal provided, however, that counsel shall not have access to the name of, address of, or any other identifying information about the victim or victims, or to any investigative or other reports that relate to matters beyond the scope of the proceedings and are confidential or privileged from disclosure. To the extent possible, such identifying information should be redacted so as to provide counsel with access to the balance of the document.

(e) At any hearing or trial pursuant to the provisions of this article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the respondent.

(e-1) Records or reports provided to the respondent in accordance with this article shall be disclosed in the circumstances and in the same manner as records and reports disclosed pursuant to the provisions of section 33.16 of this chapter.

(f) Time periods specified by provisions of this article for actions by state agencies are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action except as explicitly provided by the provision in question. The court may extend any time period at the request, or on the consent, of the respondent. No provision of this article shall be interpreted so as to prevent a respondent, after opportunity to consult with counsel for respondent, from consenting to the relief which could be sought by an agency with jurisdiction by means of a court proceeding under this article.

(g) In preparing for or conducting any hearing or trial pursuant to the provisions of this article, and in preparing any petition under the provisions of this article, the respondent shall have the right to have counsel represent him or her, provided that the respondent shall not be entitled to appointment of counsel prior to the time provided in section 10.06 of this article. The attorney general shall represent the state. Any relevant written reports of psychiatric examiners shall be admissible, regardless of whether the author of the report is called to testify, so long as they are certified pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, in any proceeding or hearing held pursuant to subdivision (g) or (h) of section 10.06 of this article, paragraph two of subdivision (a), or paragraph four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11 of this article. In all other proceedings or hearings held pursuant to this article, such admissibility shall require a showing of the author's unavailability to testify, or other good cause. All plea minutes and prior trial testimony from the underlying criminal proceeding, and records from previous proceedings under this article, shall be admissible. Each witness, whether called by the attorney general or the respondent, must, unless he or she would be authorized to give unsworn evidence at a trial, testify under oath, and may be cross-examined. The respondent may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf. The respondent may not, however, cause a subpoena to be served on the person against whom the sex offense was committed or alleged to have been committed by the respondent, except upon order of the court for good cause shown. Either party may request closure of the courtroom, or sealing of papers, for good cause shown.

(h) The procedures and standards set forth in this article governing the imposition of conditions upon the respondent are intended to be the minimum required to provide for the protection of the public and treatment of the respondent. Nothing in this article shall be construed to require the availability or imposition of forms of treatment or supervision other than those for which this article specifically provides.

(i)(1) At a proceeding conducted pursuant to subdivision (g) or (h) of section 10.06 of this article, a psychiatric examiner called to testify may be permitted, upon good cause shown, to testify by electronic appearance in the court by means of an independent audiovisual system, as that phrase is defined in subdivision one of section 182.10 of the criminal procedure law. It shall constitute good cause to permit such an electronic appearance that such proposed witness is currently employed by the state at a secure treatment facility or another work location unless there are compelling circumstances requiring the witness' personal presence at the court proceeding.

(2) A copy of any clinical record or other document that the party calling such psychiatric examiner intends to present to the witness or introduce during the direct testimony of such psychiatric examiner by electronic appearance shall be provided to opposing counsel and, in a manner consistent with section 33.16 of this chapter, the respondent: (i) five days or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to subdivision (g) of section 10.06 of this article, and (ii) twenty-four hours or more before the date such person is called to testify by electronic appearance at a proceeding conducted pursuant to subdivision (h) of such section 10.06.

(3) Except as provided in paragraph four of this subdivision, copies of clinical records and documents not made available to opposing counsel and, where applicable, the respondent as required by paragraph two of this subdivision shall not be permitted to be presented to the witness on direct examination or introduced in evidence without the consent of opposing counsel provided, however, that where good cause is shown why such clinical record or other document was not provided sufficiently in advance as required by this subdivision, the court shall allow such clinical record or other document to be provided by appropriate means, including but not limited to facsimile or electronic means, and then used or considered in the same manner as if timely advance disclosure had been made.

(4) The court shall order that copies of clinical records and other documents relevant for cross-examination, redirect examination or recross examination of such witness testifying by electronic means, not otherwise provided pursuant to this subdivision, be provided to opposing counsel and, in a manner consistent with section 33.16 of this chapter, the respondent, by appropriate means, including but not limited to facsimile or other electronic means.

(5) For purposes of this subdivision, an "electronic appearance" means an appearance at which a participant is not present in the court, but in which all of the participants are able to see and hear the simultaneous reproductions of the voices and images of the judge, counsel, respondent and any other appropriate participant. When a witness makes an electronic appearance pursuant to this subdivision, the court stenographer shall record any statements in the same manner as if the witness had made a personal appearance.

N.Y. MENTAL HYG. LAW § 10.09 (2012). Annual examinations and petitions for discharge

(a) The commissioner shall provide the respondent and counsel for respondent with an annual written notice of the right to petition the court for discharge. The notice shall contain a form for the waiver of the right to petition for discharge.

(b) The commissioner shall also assure that each respondent committed under this article shall have an examination for evaluation of his or her mental condition made at least once every year (calculated from the date on which the supreme or county court judge last ordered or confirmed the need for continued confinement pursuant to this article or the

date on which the respondent waived the right to petition for discharge pursuant to this section, whichever is later, as applicable) conducted by a psychiatric examiner who shall report to the commissioner his or her written findings as to whether the respondent is currently a dangerous sex offender requiring confinement. At such time, the respondent also shall have the right to be evaluated by an independent psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following such evaluation, each psychiatric examiner shall report his or her findings in writing to the commissioner and to counsel for respondent. The commissioner shall review relevant records and reports, along with the findings of the psychiatric examiners, and shall make a determination in writing as to whether the respondent is currently a dangerous sex offender requiring confinement.

(c) The commissioner shall annually forward the notice and waiver form, along with a report including the commissioner's written determination and the findings of the psychiatric examination, to the supreme or county court where the respondent is located.

(d) The court shall hold an evidentiary hearing as to retention of the respondent within forty-five days if it appears from one of the annual submissions to the court under subdivision (c) of this section (i) that the respondent has petitioned, or has not affirmatively waived the right to petition, for discharge, or (ii) that even if the respondent has waived the right to petition, and the commissioner has determined that the respondent remains a dangerous sex offender requiring confinement, the court finds on the basis of the materials described in subdivision (b) of this section that there is a substantial issue as to whether the respondent remains a dangerous sex offender requiring confinement. At an evidentiary hearing on that issue under this subdivision, the attorney general shall have the burden of proof.

(e) If, at any time, the commissioner determines that the respondent no longer is a dangerous sex offender requiring confinement, the commissioner shall petition the court for discharge of the respondent or for the imposition of a regimen of strict and intensive supervision and treatment. The petition shall be served upon the attorney general and the respondent, and filed in the supreme or county court where the person is located. The court, upon review of the petition, shall either order the requested relief or order that an evidentiary hearing be held.

(f) The respondent may at any time petition the court for discharge and/or release to the community under a regimen of strict and intensive supervision and treatment. Upon review of the respondent's petition, other than in connection with annual reviews as described in subdivisions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next annual review. If the court orders an evidentiary hearing under this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

(g) In connection with any evidentiary hearing held pursuant to subdivision (d), (e), or (f) of this section, upon the request of either party or upon its own motion, the court may direct the submission of evidence, and may order a psychiatric evaluation if the court finds that any available examination reports are not current or otherwise not sufficient.

(h) At the conclusion of an evidentiary hearing, if the court finds by clear and convincing evidence that the respondent is currently a dangerous sex offender requiring confinement, the court shall continue the respondent's confinement. Otherwise the court, unless it finds that the respondent no longer suffers from a mental abnormality, shall issue an order providing for the discharge of the respondent to a regimen of strict and intensive supervision and treatment pursuant to section 10.11 of this article.

N.Y. MENTAL HYG. LAW § 10.10 (2012). Treatment and confinement

(a) If the respondent is found to be a dangerous sex offender requiring confinement and committed to a secure treatment facility, that facility shall provide care, treatment, and control of the respondent until such time that a court discharges the respondent in accordance with the provisions of this article.

(b) The commissioner shall, for persons committed pursuant to this article, develop and implement a treatment plan in accordance with the provisions of section 29.13 of this chapter. The commissioner shall give due regard to any relevant standards, guidelines, and best practices recommended by the office of sex offender management.

(c) The commissioner, or the commissioner of the department of corrections and community supervision, or other government entity responsible for the care and custody of respondents, shall be authorized to employ appropriate safety and security measures, as he or she deems necessary to ensure the safety of the public, during court proceedings and in the transport of persons committed or undergoing any proceedings under this article. Such commissioner shall provide training in the use of safe and appropriate security interventions to employees responsible for transporting persons under this article.

(d) The commissioner shall have the discretion to enter into agreements with the department of corrections and community supervision for the provision of security services relating to this article.

(e) Persons in the custody of the commissioner pursuant to this article shall be kept separate from other persons in the care, custody and control of the commissioner, and shall be segregated from such other persons, provided, however, that persons committed or subject to proceedings under this article need not be segregated from other sex offenders committed or subject to proceedings under this article, article nine of this title, or section four hundred two of the correction law. If any dangerous sex offenders requiring confinement are committed to a secure treatment facility located on the grounds of a correctional facility, they shall be kept separate from persons in custody as a result of criminal cases, and shall be segregated from such persons. Occasional instances of

supervised, incidental contact between persons required by this subdivision to be segregated shall not be considered a violation of such segregation requirements.

(f) In accordance with security procedures developed by the commissioner, a person committed under this article may be granted an escorted privilege by the director of the secure treatment facility in which he or she is receiving care and treatment but only for the purposes of allowing the person to receive medical or dental care or treatment not available at the facility, to visit a family member who is seriously ill or to attend the funeral of a family member. A person granted an escorted privilege shall be under the constant supervision of one or more facility employees who have been designated by the commissioner or other specially trained personnel approved by the commissioner to provide care and supervision of such persons.

(g) If a person is in the custody of the commissioner pursuant to an order issued under this article, and such person escapes from custody, notice of such escape shall be given as soon as the facility staff learns of such escape, and shall include such information as will adequately identify the escaped individual, any person or persons believed to be in danger, and the nature of the danger. Such notice shall be given by any means reasonably calculated to give prompt actual notice, and shall be given to:

(1) the district attorney of the county where the person was convicted, adjudicated, or charged; the attorney general; and counsel for respondent or the mental hygiene legal service;

(2) the superintendent of the state police;

(3) the sheriff of the county where the escape occurred;

(4) the police department having jurisdiction of the area where the escape occurred;

(5) any victim or victims who submitted the notification form described in subdivision four of section 380.50 of the criminal procedure law;

(6) any person the facility staff reasonably believes could be in danger;

(7) any law enforcement agency and any person the facility staff believes would be able to apprise such victim or victims that the person escaped from the facility; and

(8) any other person the committing court may designate.

(h) The person may be apprehended, restrained, transported, and returned to the facility from which he or she escaped by any police officer or peace officer, and it shall be the duty of such officer to assist any representative of the commissioner to take the person into custody upon the request of such representative.

(i) The commissioner shall submit to the governor and the legislature no later than December first of each year, a report on the implementation of this article. Such report shall include, but not be limited to, the census of each existing treatment facility, the number of persons reviewed by the case review teams for proceedings under this article, the number of persons committed pursuant to this article, their crimes of conviction, and projected future capacity needs.

N.Y. MENTAL HYG. LAW § 10.11 (2012). Regimen of strict and intensive supervision and treatment

(a)(1) Before ordering the release of a person to a regimen of strict and intensive supervision and treatment pursuant to this article, the court shall order that the department of corrections and community supervision recommend supervision requirements to the court. These supervision requirements, which shall be developed in consultation with the commissioner, may include but need not be limited to, electronic monitoring or global positioning satellite tracking for an appropriate period of time, polygraph monitoring, specification of residence or type or residence, prohibition of contact with identified past or potential victims, strict and intensive supervision by a parole officer, and any other lawful and necessary conditions that may be imposed by a court. In addition, after consultation with the psychiatrist, psychologist or other professional primarily treating the respondent, the commissioner shall recommend a specific course of treatment. A copy of the recommended requirements for supervision and treatment shall be given to the attorney general and the respondent and his or her counsel a reasonable time before the court issues its written order pursuant to this section.

(2) Before issuing its written order, the court shall afford the parties an opportunity to be heard, and shall consider any additional submissions by the respondent and the attorney general concerning the proposed conditions of the regimen of strict and intensive supervision and treatment. The court shall issue an order specifying the conditions of the regimen of strict and intensive supervision and treatment, which shall include specified supervision requirements and compliance with a specified course of treatment. A written statement of the conditions of the regimen of strict and intensive supervision and treatment shall be given to the respondent and to his or her counsel, any designated service providers or treating professionals, the commissioner, the attorney general and the supervising parole officer. The court shall require the department of corrections and community supervision to take appropriate actions to implement the supervision plan and assure compliance with the conditions of the regimen of strict and intensive supervision and treatment. A regimen of strict and intensive supervision does not toll the running of any form of supervision in criminal cases, including but not limited to post-release supervision and parole.

(b) (1) Persons ordered into a regimen of strict and intensive supervision and treatment pursuant to this article shall be subject to a minimum of six face-to-face supervision contacts and six collateral contacts per month. Such minimum contact requirements shall continue unless subsequently modified by the court or the department of corrections and community supervision.

(2) Any agency, organization, professional or service provider designated to provide treatment to the person shall, unless otherwise directed by the court, submit every four months to the court, the commissioner, the attorney general and the supervising parole officer a report describing the person's conduct while under a regimen of strict and intensive supervision and treatment.

(c) An order for a regimen of strict and intensive supervision and treatment places the person in the custody and control of the department of corrections and community supervision. A person ordered to undergo a regimen of strict and intensive supervision and treatment pursuant to this article is subject to lawful conditions set by the court and the department of corrections and community supervision.

(d)(1) A person's regimen of strict and intensive supervision and treatment may be revoked if such a person violates a condition of strict and intensive supervision. If a parole officer has reasonable cause to believe that the person has violated a condition of the regimen of strict and intensive supervision and treatment or, if there is an oral or written evaluation or report by a treating professional indicating that the person may be a dangerous sex offender requiring confinement, a parole officer authorized in the same manner as provided in subparagraph (i) of paragraph (a) of subdivision three of section two hundred fifty-nine-i of the executive law may take the person into custody and transport the person for lodging in a secure treatment facility or a local correctional facility for an evaluation by a psychiatric examiner, which evaluation shall be conducted within five days. A parole officer may take the person, under custody, to a psychiatric center for prompt evaluation, and at the end of the examination, return the person to the place of lodging. A parole officer, as authorized by this paragraph, may direct a peace officer, acting pursuant to his or her special duties, or a police officer who is a member of an authorized police department or force or of a sheriff's department, to take the person into custody and transport the person as provided in this paragraph. It shall be the duty of such peace officer or police officer to take into custody and transport any such person upon receiving such direction. The department of corrections and community supervision shall promptly notify the attorney general and the mental hygiene legal service, when a person is taken into custody pursuant to this paragraph. No provision of this section shall preclude the board of parole from proceeding with a revocation hearing as authorized by subdivision three of section two hundred fifty-nine-i of the executive law.

(2) After the person is taken into custody for the evaluation, the attorney general may file: (i) a petition for confinement pursuant to paragraph four of this subdivision and/or (ii) a petition pursuant to subdivision (e) of this section to modify the conditions of a regimen of strict and intensive supervision and treatment. Either petition shall be filed in the court that issued the order imposing the regimen of strict and intensive supervision and treatment. The attorney general shall seek to file the petition within five days after the person is taken into custody for evaluation. If no petition is filed within that time, the respondent shall be released immediately, subject to the terms of the previous order imposing the regimen of strict and intensive supervision, but failure to file a petition within such time shall not affect the validity of such petition or any subsequent action.

(3) A petition filed under paragraph two of this subdivision shall be served promptly on the respondent and the mental hygiene legal service. The court shall appoint legal counsel in accordance with subdivision (c) of section 10.06 of this article. Counsel for respondent shall be provided with a copy of the written report, if any, of the psychiatric examiner who conducted the evaluation pursuant to this section.

(4) A petition for confinement shall contain the parole officer's sworn allegations demonstrating reasonable cause to believe that the respondent violated a condition of his or her strict and intensive supervision, and shall be accompanied by any written evaluations or reports by a treating professional indicating that the respondent may be a dangerous sex offender requiring confinement. If a petition is filed within the five-day period seeking the respondent's confinement, then the court shall promptly review the petition and, based on the allegations in the petition and any accompanying papers, determine whether there is probable cause to believe that the respondent is a dangerous sex offender requiring confinement. Upon the finding of probable cause, the respondent may be retained in a local correctional facility or a secure treatment facility pending the conclusion of the proceeding. In the absence of such a finding, the respondent shall be released, but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within thirty days after a petition for confinement is filed under paragraph two of this subdivision, the court shall conduct a hearing to determine whether the respondent is a dangerous sex offender requiring confinement. Any failure to commence the hearing within the time period specified shall not result in the dismissal of the petition and shall not affect the validity of the hearing or the determination. The court shall make its determination of whether the respondent is a dangerous sex offender requiring confinement in accordance with the standards set forth in subdivision (f) of section 10.07 of this article. If the court finds that the attorney general has not met the burden of showing by clear and convincing evidence that the respondent is a dangerous sex offender requiring confinement, but finds that the respondent continues to be a sex offender requiring strict and intensive supervision, the court shall order the person to be released under the previous order imposing a regimen of strict and intensive supervision and treatment, unless it modifies the order imposing a regimen of strict and intensive supervision and treatment pursuant to subdivision (f) of this section. If the court determines that the attorney general has met the burden of showing by clear and convincing evidence that the respondent is a dangerous sex offender requiring confinement, the court shall order that the respondent be committed to a secure treatment facility immediately. The respondent shall not be released pending the completion of the hearing.

(e) If the attorney general files only a petition for modification under paragraph two of subdivision (d) of this section, the respondent shall be released but the court may impose revised conditions of supervision and treatment pending completion of the hearing. Within five days after filing of the petition for modification, the court shall conduct a hearing to determine whether the respondent's conditions of treatment and supervision should be modified. The attorney general shall have the burden of showing that the modifications sought are warranted, and the court shall order such modifications to the extent that it finds that the attorney general has met that burden.

(f) The court may modify or terminate the conditions of the regimen of strict and intensive supervision and treatment on the petition of the supervising parole officer, the commissioner or the attorney general. Such petition shall be served on the respondent and the respondent's counsel. A person subject to a regimen of strict and intensive supervision and treatment pursuant to this article may petition every two years for modification or termination, commencing no sooner than two years after the regimen of strict and intensive supervision and treatment commenced, with service of such petition on the attorney general, the department of corrections and community supervision, and the commissioner. Upon receipt of a petition for modification or termination pursuant to this section, the court may require the department of corrections and community supervision and the commissioner to provide a report concerning the person's conduct while subject to a regimen of strict and intensive supervision and treatment. If more than one petition is filed, the petitions may be considered in a single hearing.

(g) Upon receipt of a petition for modification pursuant to this section, the court may hold a hearing on such petition. The party seeking modification shall have the burden of showing that those modifications are warranted, and the court shall order such modifications to the extent that it finds that the party has met that burden.

(h) Upon receipt of a petition for termination pursuant to this section, the court may hold a hearing on such petition. When the petition is filed by the respondent, the attorney general shall have the burden of showing by clear and convincing evidence that the respondent is currently a sex offender requiring civil management. If the court finds that the attorney general has not sustained that burden, it shall order the respondent's discharge from the regimen of strict and intensive supervision and treatment. Otherwise the court shall continue the regimen of strict and intensive supervision and treatment but may revise conditions of supervision and treatment as warranted.

N.Y. MENTAL HYG. LAW § 10.13 (2012). Appeals

(a) The attorney general may, in the appellate division of the supreme court, seek a stay of any order under this article releasing a person under this article.

(b) The attorney general may appeal as of right from an order entered pursuant to subdivision (k) of section 10.06 of this article dismissing the petition following a determination that probable cause to believe that the respondent is a sex offender requiring civil management has not been established. No appeal may be taken from an order entered pursuant to subdivision (k) of section 10.06 of this article determining that probable cause has been established to believe the respondent is a sex offender requiring civil management. Both the respondent and the attorney general may appeal from any final order entered pursuant to this article. The provisions of articles fifty-five, fifty-six, and fifty-seven of the civil practice law and rules shall govern appeals taken from orders entered pursuant to this article.

(c) In connection with any appeal, a respondent who is or becomes financially unable to obtain counsel shall have the right to have appellate counsel appointed on his or her

behalf. Such counsel shall be appointed by the court to which an appeal is taken. If possible, the court shall appoint the mental hygiene legal service. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article.

NORTH CAROLINA

NORTH DAKOTA

N.D. CENT. CODE § 25-03.3-01 (2011). Definitions

8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, intellectual disability is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

9. "Sexually predatory conduct" means:

a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:

(1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat or coercion that would render a person reasonably incapable of resisting;

(2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;

(3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;

(4) The victim is less than fifteen years old;

(5) The actor knows or should have known that the victim has a disability that substantially impairs the victim's understanding of the nature of the sexual act or contact;

(6) The victim is in official custody or detained in a treatment facility, health care facility, correctional facility, or other institution and is under the supervisory authority, disciplinary control, or care of the actor;

(7) The victim is a minor and the actor is an adult; or

(8) The other individual is a person related to the actor within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03 and the actor knows that; or

b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:

(1) The actor knows or should have known that the contact is offensive to the victim; or

(2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

10. “Should have known” means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

11. “Superintendent” means the superintendent of the state hospital or the superintendent's designee.

12. “Treatment facility” means any hospital, including the state hospital, or any treatment facility , including the developmental center at westwood park, Grafton, which can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

N.D. CENT. CODE § 25-03.3-03 (2011). Sexually dangerous individual--Petition

1. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.

2. The petition and any proceeding under section 25-03.3-11 are confidential and are not public records or proceedings under sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. The court may permit access to a respondent's records or proceedings under this chapter to the respondent's guardian, guardian ad litem, or other similarly situated individual. The court may permit access to information in the respondent's records to other individuals who require the information for use in performing official governmental duties. Notwithstanding any other provision

of law, proceedings under section 25-03.3-13 and any evidence introduced or presented to the court for any such proceeding are required to be open to the public, with the exception of a proceeding involving an individual who has not been convicted of a sexual act as defined in section 25-03.3-01. The protections of subsection 10 of section 12.1-34-02 and section 12.1-35-03 apply to any records or proceedings under this chapter.

N.D. CENT. CODE § 25-03.3-03.1 (2011). Referral of inmates to state's attorneys--Immunity

1. The department of corrections and rehabilitation shall maintain treatment records for any inmate who has been convicted of an offense that includes sexually predatory conduct. Approximately six months before the projected release date of the inmate, the department shall complete an assessment of the inmate to determine whether a recommendation is to be made to a state's attorney for civil commitment of the inmate under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the director to be relevant, including inmate behavior and whether the inmate participated in sexual offender treatment while incarcerated.

2. If, upon the completion of the assessment, the department determines the inmate may meet the definition of a sexually dangerous individual, the department shall refer the inmate to a state's attorney of an appropriate county as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.

3. Any referral from the department must include a summary of the factors considered material to the determination that the inmate is appropriate for referral. The department shall provide a copy of the referral and summary to the attorney general and the superintendent of the developmental center and the state hospital.

4. Following the receipt of a referral, but at least sixty days before the release date of the inmate, the state's attorney shall notify the department and the attorney general of the state's attorney's intended disposition of the referral.

5. Any person participating in good faith in the assessment and referral of an inmate is immune from any civil or criminal liability. For the purpose of any civil or criminal proceeding, the good faith of any person required to participate in the assessment and referral of an inmate is presumed.

N.D. CENT. CODE § 25-03.3-04 (2011). Retention of records

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

N.D. CENT. CODE § 25-03.3-05 (2011). Abrogation of confidentiality statutes and privileges

1. Notwithstanding any other provision of law requiring confidentiality of information about individuals receiving care, custody, education, treatment, or any other services from the state or any political subdivision, any confidential information about a respondent or committed individual must be released to a state's attorney for proceedings pursuant to this chapter unless release results in the loss of federal funds. The physician-patient privilege and psychotherapist-patient privilege do not apply to communications relevant to an issue in proceedings to commit an individual as a sexually dangerous person if the physician or psychotherapist in the course of diagnosis or treatment determines the patient is in need of commitment and to communications with a committed individual. The provision of any confidential or privileged information to the state's attorney does not render the state, any political subdivision, or any state or political subdivision official or employee, or other person liable pursuant to any criminal or civil law relating to confidentiality or privilege.

2. For purposes of this chapter, the disclosure of individually identifiable health information by a treating facility or mental health professional to the state hospital or a mental health professional, including an expert examiner, is a disclosure for treatment. A retained or appointed counsel has the right to obtain individually identifiable health information regarding a respondent in a proceeding under this chapter. In any other case, the right of an inmate or a patient to obtain protected health information must be in accordance with title 45, Code of Federal Regulations, part 164.

N.D. CENT. CODE § 25-03.3-06 (2011). Use of confidential records

Upon request, any confidential records provided to the state's attorney pursuant to this chapter must be made available to the respondent or committed individual, the attorney of the respondent or committed individual, a qualified expert charged with examining the respondent or committed individual, the court, and any treatment facility in which the respondent or committed individual is being evaluated or treated pursuant to this chapter.

N.D. CENT. CODE § 25-03.3-08 (2011). Sexually dangerous individual--Procedure on petition--Detention

1. Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard ex parte. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility or local correctional facility to be held for subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.

2. If the state's attorney knows or believes the respondent named in the petition is an individual with an intellectual disability, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with an intellectual disability may be detained in a

correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

N.D. CENT. CODE § 25-03.3-10 (2011). Notice

If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing. If notice is given to a respondent who the state's attorney knows or believes is an individual with an intellectual disability, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

N.D. CENT. CODE § 25-03.3-11 (2011). Preliminary hearing--Probable cause

The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible at a commitment hearing. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with an intellectual disability may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with an intellectual disability.

N.D. CENT. CODE § 25-03.3-12 (2011). Sexually dangerous individual--Evaluation

The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's

behalf. When the respondent is an adult with an intellectual disability and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

N.D. CENT. CODE § 25-03.3-13 (2011). Sexually dangerous individual--Commitment proceeding--Report of findings

Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless expert evidence is admitted establishing that the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

N.D. CENT. CODE § 25-03.3-15 (2011). Evidence of prior acts

Notwithstanding any other provision of law, in any proceeding pursuant to this chapter, evidence of prior sexually predatory conduct or criminal conduct, including a record of the juvenile court, is admissible.

N.D. CENT. CODE § 25-03.3-17 (2011). Postcommitment proceeding, discharge, and further disposition

1. A committed individual must remain in the care, custody, and control of the executive director until, in the opinion of the executive director, the individual is safe to be at large.

2. Each committed individual must have an examination of that individual's mental condition at least once a year. A report regarding the examination must be provided to the court that committed the individual. At the time of the annual examination, the committed individual has the right to have an expert examine the individual, and, upon the request of an indigent committed individual, the court shall appoint a qualified expert to examine the committed individual and report to the court. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

3. If a committed individual has been committed to an out-of-state facility by the executive director for purposes of treatment, an expert from that state may be appointed by the court as a qualified expert for an indigent committed individual for any postcommitment proceeding.

4. After any report pursuant to this section is provided to the court, the court may order further examination and investigation of the committed individual as the court considers necessary. The court may set the matter for a hearing. At the hearing, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state at the hearing. After the hearing, the court shall determine whether the committed individual is to be discharged or to be retained as a sexually dangerous individual in the care, custody, and control of the executive director.

5. The executive director may only discharge a sexually dangerous individual from commitment pursuant to a court order. The executive director may petition the committing court at any time for the discharge of the committed individual. The executive director shall give the state's attorney notice of any petition for discharge the executive director files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court on the petition. The state's attorney may waive this right.

6. If the executive director moves a committed individual from a placement in the community to a placement in a secure treatment facility that is more restrictive, the committed individual may challenge the move at a hearing to be held within thirty days after the move in accordance with procedures established by the department of human services.

N.D. CENT. CODE § 25-03.3-18 (2011). Petition for discharge--Notice

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on

the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is an individual with an intellectual disability, the executive director shall also provide the written notice to the individual's attorney, guardian, and guardian ad litem, if any.

2. If the committed individual files a petition for discharge and has not had a hearing pursuant to section 25-03.3-17 or this section during the preceding twelve months, the committed individual has a right to a hearing on the petition.

3. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. The court shall appoint a qualified expert if the committed individual is indigent and requests an appointment. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

4. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.

N.D. CENT. CODE § 25-03.3-19 (2011). Appeal

The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is an individual with an intellectual disability, the court shall provide notice of the right to appeal to the respondent's attorney, the respondent's guardian, and guardian ad litem.

OHIO

OKLAHOMA

OREGON

OR. REV. STAT. ANN. § 426.510 (2012). "Sexually dangerous person" defined

As used in ORS 426.510 to 426.680, unless the context otherwise requires, "sexually dangerous person" means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a mental disease or defect, is deemed likely to continue to perform such acts and be a danger to other persons.

OR. REV. STAT. ANN. § 426.670 (2012). Treatment programs for sexually dangerous persons

The Oregon Health Authority hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state Department of Corrections institution, as part of an existing program within an Oregon Health Authority institution, or in specified and approved sites in the community to receive, treat, study and retain in custody, as required, such sexually dangerous persons as are committed under ORS 426.510 to 426.670.

OR. REV. STAT. ANN. § 426.675 (2012). Determination of sexually dangerous persons; custody pending sentencing; hearing; sentencing; rules

(1) When a defendant has been convicted of a sexual offense under ORS 163.305 to 163.467 or 163.525 and there is probable cause to believe the defendant is a sexually dangerous person, the court prior to imposing sentence may continue the time for sentencing and commit the defendant to a facility designated under ORS 426.670 for a period not to exceed 30 days for evaluation and report.

(2) If the facility reports to the court that the defendant is a sexually dangerous person and that treatment available may reduce the risk of future sexual offenses, the court shall hold a hearing to determine by clear and convincing evidence that the defendant is a sexually dangerous person. The state and the defendant shall have the right to call and cross-examine witnesses at such hearing. The defendant may waive the hearing required by this subsection.

(3) If the court finds that the defendant is a sexually dangerous person and that treatment is available which will reduce the risk of future sexual offenses, it may, in its discretion at the time of sentencing:

(a) Sentence the defendant to probation on the condition that the person participate in and successfully complete a treatment program for sexually dangerous persons pursuant to ORS 426.670;

(b) Impose a sentence of imprisonment with the order that the defendant be assigned by the Director of the Department of Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Department of Corrections

and the Oregon Health Authority shall jointly adopt administrative rules to coordinate assignment and treatment of prisoners under this subsection; or

(c) Impose any other sentence authorized by law.

OR. REV. STAT. ANN. § 426.680 (2012). TRIAL VISITS

(1) The superintendent of the facility designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment of sexually dangerous persons may grant a trial visit to a defendant committed as a condition of probation where:

(a) The trial visit is not inconsistent with the terms and conditions of probation; and

(b) The trial visit is agreed to by the community mental health program director for the county in which the person would reside.

(2) Trial visit here shall correspond to trial visit as described in ORS 426.273 to 426.292 and 426.335, except that the length of a trial visit may be for the duration of the period of probation, subject to the consent of the sentencing court.

PENNSYLVANIA

42 PA. CONS. STAT. ANN. § 6402 (2012). Definitions

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

"Act of sexual violence." Any conduct prohibited under the following provisions of law:

(1) 18 PA.C.S. § 3121 (relating to rape).

(2) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(3) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(4) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(5) 18 Pa.C.S. § 3126 (relating to indecent assault).

(6) 18 Pa.C.S. § 4302 (relating to incest).

"Board." The board as defined in section 6302 (relating to definitions).

"County Solicitor." The solicitor appointed by the county commissioners or a similar body in home rule counties.

"Department." The Department of Public Welfare of the Commonwealth.

“Mental abnormality.” A congenital or acquired condition of a person affecting the person's emotional or volitional capacity.

“Sexually violent delinquent child.” A person who has been found delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest) and who has been determined to be in need of commitment for involuntary treatment under this chapter.

42 PA. CONS. STAT. ANN. § 6403 (2012). Court-ordered involuntary treatment

(a) Persons subject to involuntary treatment.--A person may be subject to court-ordered commitment for involuntary treatment under this chapter if the person:

(1) Has been adjudicated delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S.A. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest).

(2) Has been committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and remains in the institution or other facility upon attaining 20 years of age.

(3) Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

(b) Procedures for initiating court-ordered involuntary commitment.--

(1) Where, pursuant to the provisions of section 6358(f) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board), the court determines that a prima facie case has been presented that the child is in need of involuntary treatment under the provisions of this chapter, the court shall order that a petition be filed by the county solicitor or a designee before the court having jurisdiction of the person pursuant to Chapter 63 (relating to juvenile matters).

(2) The petition shall be in writing in a form adopted by the department and shall set forth the facts constituting reasonable grounds to believe the individual is within the criteria for court-ordered involuntary treatment as set forth in subsection (a). The petition shall include the assessment of the person by the board as required in section 6358.

(3) The court shall set a date for the hearing which shall be held within 30 days of the filing of the petition pursuant to paragraph (1) and direct the person to appear for the

hearing. A copy of the petition and notice of the hearing date shall be served on the person, the attorney who represented the person at the most recent dispositional review hearing pursuant to section 6358(e) and the county solicitor or a designee. The person and the attorney who represented the person shall, along with copies of the petition, also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(4) The person shall be informed that the person has a right to be assisted in the proceedings by an independent expert in the field of sexually violent behavior. If the person cannot afford to engage such an expert, the court shall allow a reasonable fee for such purpose.

(c) Hearing.--A hearing pursuant to this chapter shall be conducted as follows:

(1) The person shall not be called as a witness without the person's consent.

(2) The person shall have the right to confront and cross-examine all witnesses and to present evidence on the person's own behalf.

(3) The hearing shall be public.

(4) A stenographic or other sufficient record shall be made.

(5) The hearing shall be conducted by the court.

(6) A decision shall be rendered within five days after the conclusion of the hearing.

(d) Determination and order.--Upon a finding by clear and convincing evidence that the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence, an order shall be entered directing the immediate commitment of the person for inpatient involuntary treatment to a facility designated by the department. The order shall be in writing and shall be consistent with the protection of the public safety and the appropriate control, care and treatment of the person. An appeal shall not stay the execution of the order.

42 PA. CONS. STAT. ANN. § 6404 (2012). Duration of commitment and review

(a) Initial period of commitment.--The person shall be subject to a period of commitment for inpatient treatment for one year.

(b) Annual review.--

(1) Sixty days prior to the expiration of the one-year commitment period, the director of the facility or a designee shall submit an evaluation and the board shall submit an assessment of the person to the court.

(2) The court shall schedule a review hearing which shall be conducted pursuant to section 6403(c) (relating to court-ordered involuntary treatment) and which shall be held no later than 30 days after receipt of both the evaluation and the assessment under paragraph (1). Notice of the review hearing shall be provided to the person, the attorney who represented the person at the previous hearing held pursuant to this subsection or section 6403, the district attorney and the county solicitor or a designee. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person. If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order an additional period of involuntary treatment of one year; otherwise, the court shall order the discharge of the person. The order shall be in writing and shall be consistent with the protection of the public safety and appropriate control, care and treatment of the person.

(c) Discharge.--

(1) If at any time the director or a designee of the facility to which the person was committed concludes the person no longer has serious difficulty in controlling sexually violent behavior, the director shall petition the court for a hearing. Notice of the petition shall be given to the person, the attorney who represented the person at the previous hearing held pursuant to subsection (b) or section 6403, the board, the district attorney and the county solicitor. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(2) Upon receipt of notice under paragraph (1), the board shall conduct a new assessment within 30 days and provide that assessment to the court.

(3) Within 15 days after the receipt of the assessment from the board, the court shall hold a hearing pursuant to section 6403(c). If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order that the person be subject to the remainder of the period of commitment. Otherwise, the court shall order the discharge of the person.

(4) The department shall provide the person with notice of the person's right to petition the court for discharge over the objection of the department. The court, after review of the petition, may schedule a hearing pursuant to section 6403(c).

42 PA. CONS. STAT. ANN. § 6406 (2012). Duty of Department of Public Welfare

(a) General rule.--The department shall have the duty to provide a separate, secure State-owned facility or unit utilized solely for the control, care and treatment of persons committed pursuant to this chapter. The department shall be responsible for all costs relating to the control, care and treatment of persons committed to custody pursuant to this chapter.

(b) Interim facility.--The department may designate a State-owned facility or unit which currently receives children who are adjudicated delinquent and committed under Chapter 63 (relating to juvenile matters) to receive individuals committed under this chapter as long as these individuals are segregated at all times from children committed under Chapter 63. This subsection shall expire July 1, 2006.

(c) Treatment plans.--The department, in consultation with the Juvenile Court Judges' Commission and the board, shall develop policies and procedures for providing individualized treatment and discharge plans based on clinical guidelines and professional standards in the fields of sexual offender treatment and mental health.

RHODE ISLAND

SOUTH CAROLINA

S.C. CODE ANN. § 44-48-30 (2011). Definitions.

For purposes of this chapter:

(1) “Sexually violent predator” means a person who:

(a) has been convicted of a sexually violent offense; and

(b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(2) “Sexually violent offense” means:

(a) criminal sexual conduct in the first degree, as provided in Section 16-3-652;

(b) criminal sexual conduct in the second degree, as provided in Section 16-3-653;

(c) criminal sexual conduct in the third degree, as provided in Section 16-3-654;

(d) criminal sexual conduct with minors in the first degree, as provided in Section 16-3-655(1);

(e) criminal sexual conduct with minors in the second degree, as provided in Section 16-3-655(2) and (3);

(f) engaging a child for a sexual performance, as provided in Section 16-3-810;

(g) producing, directing, or promoting sexual performance by a child, as provided in Section 16-3-820;

(h) assault with intent to commit criminal sexual conduct, as provided in Section 16-3-656;

(i) incest, as provided in Section 16-15-20;

(j) buggery, as provided in Section 16-15-120;

(k) committing or attempting lewd act upon child under sixteen, as provided in Section 16-15-140;

(l) violations of Article 3, Chapter 15 of Title 16 involving a minor when the violations are felonies;

(m) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16-1-40;

(n) attempt to commit an offense enumerated in this item as provided by Section 16-1-80; or

(o) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense.

(p) criminal solicitation of a minor, as provided in Section 16-15-342, if the purpose or intent of the solicitation or attempted solicitation was to:

(i) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5); or

(ii) perform a sexual activity in the presence of the person solicited.

(3) “Mental abnormality” means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses.

(4) “Sexually motivated” means that one of the purposes for which the person committed the crime was for the purpose of the person's sexual gratification.

(5) “Agency with jurisdiction” means that agency which, upon lawful order or authority, releases a person serving a sentence or term of confinement and includes the South Carolina Department of Corrections, the South Carolina Department of Probation, Parole and Pardon Services, the Board of Probation, Parole and Pardon Services, the Department of Juvenile Justice, the Juvenile Parole Board, and the Department of Mental Health.

(6) “Convicted of a sexually violent offense” means a person has:

(a) pled guilty to, pled nolo contendere to, or been convicted of a sexually violent offense;

(b) been adjudicated delinquent as a result of the commission of a sexually violent offense;

(c) been charged but determined to be incompetent to stand trial for a sexually violent offense;

(d) been found not guilty by reason of insanity of a sexually violent offense; or

(e) been found guilty but mentally ill of a sexually violent offense.

(7) “Court” means the court of common pleas.

(8) “Total confinement” means incarceration in a secure state or local correctional facility and does not mean any type of community supervision.

(9) “Likely to engage in acts of sexual violence” means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(10) “Person” means an individual who is a potential or actual subject of proceedings under this act and includes a child under seventeen years of age.

(11) “Victim” means an individual registered with the agency of jurisdiction as a victim or as an intervenor.

(12) “Intervenor” means an individual, other than a law enforcement officer performing his ordinary duties, who provides aid to another individual who is not acting recklessly, in order to prevent the commission of a crime or to lawfully apprehend an individual reasonably suspected of having committed a crime.

S.C. CODE ANN. § 44-48-40 (2011). Notification to team, victim and attorney general regarding release, hearing or parole; effective date of parole or release; immunity.

(A) If a person has been convicted of a sexually violent offense, the agency with jurisdiction must give written notice to the multidisciplinary team established in Section 44-48-50, the victim, and the Attorney General at least two hundred seventy days before:

(1) the person's anticipated release from total confinement, except that in the case of a person who is returned to prison for no more than two hundred seventy days as a result of a revocation of any type of community supervision program, written notice must be given as soon as practicable following the person's readmission to prison;

(2) the anticipated hearing on fitness to stand trial following notice under Section 44-23-460 of a person who has been charged with a sexually violent offense but who was found unfit to stand trial for the reasons set forth in Section 44-23-410 following a hearing held pursuant to Section 44-23-430;

(3) the anticipated hearing pursuant to Section 17-24-40(C) of a person who has been found not guilty by reason of insanity of a sexually violent offense; or

(4) release of a person who has been found guilty of a sexually violent offense but mentally ill pursuant to Section 17-24-20.

(B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release, the parole or the conditional release must be granted to be effective one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole or conditional release of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.

(C) The agency with jurisdiction must inform the multidisciplinary team, the victim, and the Attorney General of:

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

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

(D) The agency with jurisdiction, its employees, officials, individuals contracting, appointed, or volunteering to perform services under this chapter, the multidisciplinary team, and the prosecutor's review committee established in Section 44-48-60 are immune from civil or criminal liability for any good-faith conduct under this act.

S.C. CODE ANN. § 44-48-50 (2011). Multidisciplinary team; appointments; review of records; membership.

The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44-48-40. These records may include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44-48-40, must assess whether or not the person satisfies the definition of a sexually violent predator. If it is determined that the person satisfies the definition of a sexually violent predator, the multidisciplinary team must forward a report of the assessment to the prosecutor's review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment. Membership of the team must include:

(1) a representative from the Department of Corrections;

(2) a representative from the Department of Probation, Parole and Pardon Services;

(3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with expertise in treating sexually violent offenders;

(4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and

(5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.

The Director of the Department of Corrections or his designee appointed pursuant to item (1) shall be the chairman of the team.

S.C. CODE ANN. § 44-48-60 (2011). Prosecutor's review committee; scope of review; membership requirements.

The Attorney General must appoint a prosecutor's review committee to review the report and records of each person referred to the committee by the multidisciplinary team. The prosecutor's review committee must determine whether or not probable cause exists to believe the person is a sexually violent predator. The prosecutor's review committee must make the probable cause determination within thirty days of receiving the report and records from the multidisciplinary team. The prosecutor's review committee must include, but is not limited to, a member of the staff of the Attorney General, an elected circuit solicitor, and a victim's representative. The Attorney General or his designee shall be the chairman of the committee. In addition to the records and reports considered pursuant to Section 44-48-50, the committee must also consider information provided by the circuit solicitor who prosecuted the person.

S.C. CODE ANN. § 44-48-70 (2011). Petition for probable cause determination.

When the prosecutor's review committee has determined that probable cause exists to support the allegation that the person is a sexually violent predator, the Attorney General must file a petition with the court in the jurisdiction where the person committed the offense and must notify the victim that the committee found that probable cause exists. The Attorney General must also notify the victim of the time, date, and location of the probable cause hearing before the court. The petition, which must be filed within thirty days of the probable cause determination by the prosecutor's review committee, must request that the court make a probable cause determination as to whether the person is a sexually violent predator. The petition must allege that the person is a sexually violent predator and must state sufficient facts that would support a probable cause allegation.

S.C. CODE ANN. § 44-48-80 (2011). Determination of probable cause; taking person into custody; hearing; evaluation.

(A) Upon filing of a petition, the court must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines that probable cause exists to believe that the person is a sexually violent predator, the person must be taken into custody if he is not already confined in a secure facility.

(B) Immediately upon being taken into custody pursuant to subsection (A), the person must be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexually violent predator. This hearing must be held within seventy-two hours after a person is taken into custody pursuant to subsection (A). At this hearing the court must:

(1) verify the detainee's identity;

(2) receive evidence and hear arguments from the person and the Attorney General; and

(3) determine whether probable cause exists to believe that the person is a sexually violent predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(C) At the probable cause hearing as provided in subsection (B), the detained person has the following rights in addition to any rights previously specified:

(1) to be represented by counsel;

(2) to present evidence on the person's behalf;

(3) to cross-examine witnesses who testify against the person; and

(4) to view and copy all petitions and reports in the court file.

(D) If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions only may be granted for extraordinary circumstances.

S.C. CODE ANN. § 44-48-90 (2011). Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.

(A) The court must conduct a trial to determine whether the person is a sexually violent predator.

(B) Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.

(C) Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the person in obtaining

the expert to perform an examination or participate in the trial on the person's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.

S.C. CODE ANN. § 44-48-100 (2011). Standard for determining predator status; control, care and treatment of person; release; mistrial procedures; persons incompetent to stand trial.

(A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release. Upon a mistrial, the court must direct that the person be held at a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.

(B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), the court first shall hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; 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; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

S.C. CODE ANN. § 44-48-110 (2011). Periodic mental examination of committed persons; report; petition for release; hearing; trial to consider release.

A person committed pursuant to this chapter must have an examination of his mental condition performed once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified expert to examine the person, and the expert must have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the person. The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. The court must conduct an annual hearing to review the status of the committed person. The committed person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health must provide the committed person with an annual written notice of the person's right to petition the court for release over the director's objection; the notice must contain a waiver of rights. The director must forward the notice and waiver form to the court with the annual report. The committed person has a right to have an attorney represent him at the hearing, but the committed person is not entitled to be present at the hearing. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the committed person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the committed person evaluated by qualified experts chosen by the State. The trial must be before a jury if requested by either the person, the Attorney General, or the solicitor. The committed person also has the right to have qualified experts evaluate the person on the person's behalf, and the court must appoint an expert if the person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

S.C. CODE ANN. § 44-48-120 (2011). PETITION FOR RELEASE; HEARING ORDERED BY COURT; EXAMINATION BY QUALIFIED EXPERT; BURDEN OF PROOF.

(A) If the Director of the Department of Mental Health determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at

large and, if released, is not likely to commit acts of sexual violence, the director must certify such determination in writing with the specific basis thereof, authorize the person to petition the court for release, and notify the Attorney General of the certification and authorization. The petition must be served upon the court and the Attorney General. The Attorney General must notify the victim of the proceeding.

(B) The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests an examination by a qualified expert as to whether the petitioner's mental abnormality or personality disorder has so changed that the petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the petitioner or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the petitioner examined by qualified experts chosen by the State. If the Attorney General retains a qualified expert who concludes that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence.

S.C. CODE ANN. § 44-48-130 (2011). Grounds for denial of petition for release.

Nothing in this chapter prohibits a person from filing a petition for release pursuant to this chapter. However, if a person has previously filed a petition for release without the approval of the Director of the Department of Mental Health, and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not changed so that the petitioner continued to be a threat and, if released, would commit acts of sexual violence, the court must deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's approval, the court must, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, must deny the petition without a hearing.

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TEX. HEALTH & SAFETY CODE ANN. § 841.002 (2011). Definitions

In this chapter:

(1) "Attorney representing the state" means an attorney employed by the civil division of the special prosecution unit to initiate and pursue a civil commitment proceeding under this chapter.

(2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) "Case manager" means a person employed by or under contract with the office to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.

(4) "Office" means the Office of Violent Sex Offender Management .

(5) "Predatory act" means an act directed toward individuals, including family members, for the primary purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

(9) "Sexually violent predator" has the meaning assigned by Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

TEX. HEALTH & SAFETY CODE ANN. § 841.003 (2011). Sexually Violent Predator

(a) A person is a sexually violent predator for the purposes of this chapter if the person:

(1) is a repeat sexually violent offender; and

(2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication;

(C) is adjudged not guilty by reason of insanity of a sexually violent offense; or

(D) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Youth Commission under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(A) is convicted, but only if the sentence for the offense is imposed; or

(B) is adjudged not guilty by reason of insanity.

TEX. HEALTH & SAFETY CODE ANN. § 841.004 (2011). Special Prosecution Unit

The civil division of the special prosecution unit, separate from that part of the unit responsible for prosecuting criminal cases, is responsible for initiating and pursuing a civil commitment proceeding under this chapter.

TEX. HEALTH & SAFETY CODE ANN. § 841.021 (2011). Notice of Potential Predator

(a) Before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

(1) is serving a sentence for:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(b) Before the person's anticipated discharge date, the Department of State Health Services shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated discharge of a person who:

(1) is committed to the department after having been adjudged not guilty by reason of insanity of:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(c) The Texas Department of Criminal Justice or the Department of State Health Services, as appropriate, shall give the notice described by Subsection (a) or (b) not later than the first day of the 16th month before the person's anticipated release or discharge date, but under exigent circumstances may give the notice at any time before the anticipated release or discharge date. The notice must contain the following information:

(1) the person's name, identifying factors, anticipated residence after release or discharge, and criminal history;

(2) documentation of the person's institutional adjustment and actual treatment; and

(3) an assessment of the likelihood that the person will commit a sexually violent offense after release or discharge.

TEX. HEALTH & SAFETY CODE ANN. § 841.022 (2011). Multidisciplinary Team

(a) The executive director of the Texas Department of Criminal Justice and the commissioner of the Department of State Health Services jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) one person from the Department of State Health Services ;

(2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;

(3) one person from the Department of Public Safety;

(4) two persons from the office or office personnel; and

(5) one person from the Council on Sex Offender Treatment.

(b) The multidisciplinary team may request the assistance of other persons in making an assessment under this section.

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under Section 841.021(a) or (b), the team shall:

(1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;

(2) give notice of that assessment to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

TEX. HEALTH & SAFETY CODE ANN. § 841.023 (2011). Assessment for Behavioral Abnormality

(a) Not later than the 60th day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the Department of State Health Services , as appropriate, shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment, the department required to make the assessment shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment.

(b) If as a result of the assessment the Texas Department of Criminal Justice or the Department of State Health Services believes that the person suffers from a behavioral abnormality, the department making the assessment shall give notice of that assessment and provide corresponding documentation to the attorney representing the state not later than the 60th day after the date of a recommendation under Section 841.022(c).

TEX. HEALTH & SAFETY CODE ANN. § 841.041 (2011). Petition Alleging Predator Status

(a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file, in a Montgomery County district court other than a family district court, a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b) A petition described by Subsection (a) must be:

(1) filed not later than the 90th day after the date the person is referred to the attorney representing the state; and

(2) served on the person as soon as practicable after the date the petition is filed.

TEX. HEALTH & SAFETY CODE ANN. § 841.061 (2011). Trial

(a) Not later than the 270th day after the date a petition is served on the person under Section 841.041, the judge shall conduct a trial to determine whether the person is a sexually violent predator.

(b) The person or the state is entitled to a jury trial on demand. A demand for a jury trial must be filed in writing not later than the 10th day before the date the trial is scheduled to begin.

(c) The person and the state are each entitled to an immediate examination of the person by an expert. All components of the examination must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) except as provided by Subsection (f), the right to present evidence on the person's behalf;

(3) the right to cross-examine a witness who testifies against the person; and

(4) the right to view and copy all petitions and reports in the court file.

(e) The attorney representing the state may rely on the petition filed under Section 841.041 and supplement the petition with documentary evidence or live testimony.

(f) A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert examinations that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to expert examination on the state's behalf as required by this subsection is subject to the following consequences:

(1) the person's failure to participate may be used as evidence against the person at trial;

(2) the person may be prohibited from offering into evidence the results of an expert examination performed on the person's behalf; and

(3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to an expert examination on the state's behalf.

(g) A judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053, Government Code, other than an objection made under Section 74.053(d), Government Code.

TEX. HEALTH & SAFETY CODE ANN. § 841.062 (2011). Determination of Predator Status

(a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination.

(b) A jury determination that the person is a sexually violent predator must be by unanimous verdict.

TEX. HEALTH & SAFETY CODE ANN. § 841.081 (2011). Civil Commitment of Predator

(a) If at a trial conducted under Subchapter D [FN1] the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or discharge from a state hospital and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

TEX. HEALTH & SAFETY CODE ANN. § 841.082 (2011). Commitment Requirements

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

(1) requiring the person to reside in a Texas residential facility under contract with the office or at another location or facility approved by the office ;

(2) prohibiting the person's contact with a victim or potential victim of the person;

(3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;

(4) requiring the person's participation in and compliance with a specific course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office;

(5) requiring the person to:

(A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;

(6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;

(7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone; and

(8) any other requirements determined necessary by the judge.

(b) A tracking service to which a person is required to submit under Subsection (a)(5) must:

(1) track the person's location in real time;

(2) be able to provide a real-time report of the person's location to the case manager at the case manager's request; and

(3) periodically provide a cumulative report of the person's location to the case manager.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the office . The office shall provide a copy of those requirements to the case manager and to the service providers.

(d) The court retains jurisdiction of the case with respect to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified at any time after notice to each affected party to the proceedings and a hearing.

TEX. HEALTH & SAFETY CODE ANN. § 841.083 (2011). Treatment; Supervision

(a) The office shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed $10,000 for providing the required treatment.

(b) The case manager shall provide supervision to the person. The provision of supervision must include a tracking service and, if required by court order, supervised housing.

(c) The office shall enter into appropriate memoranda of understanding with the Department of Public Safety for the provision of a tracking service and with the Department of Public Safety and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person. (c-2) If the equipment necessary to implement the tracking service is available through a contract entered into by the comptroller, the Department of Public Safety or the council, as appropriate, shall acquire that equipment through that contract.

(d) The office shall enter into appropriate memoranda of understanding for any necessary supervised housing. The office shall reimburse the applicable provider for housing costs under this section.

(e) The case manager shall:

(1) coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision;

(2) make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters; and

(3) provide a report to the office , semiannually or more frequently as necessary, which must include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the judge.

TEX. HEALTH & SAFETY CODE ANN. § 841.101 (2011). Biennial Examination

(a) A person committed under Section 841.081 shall receive a biennial examination. The office shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the case manager shall provide a report of the biennial examination to the judge. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter. The case manager shall provide a copy of the report to the office .

TEX. HEALTH & SAFETY CODE ANN. § 841.102 (2011). Biennial Review

(a) The judge shall conduct a biennial review of the status of the committed person.

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.103 (2011). Hearing

(a) At a hearing set by the judge under Section 841.102, the person and the state are entitled to an immediate examination of the person by an expert.

(b) If the hearing is set under Section 841.102(c)(1), hearsay evidence is admissible if it is considered otherwise reliable by the judge.

(c) If the hearing is set under Section 841.102(c)(2), the committed person is entitled to be present and to have the benefit of all constitutional protections provided to the person at the initial civil commitment proceeding. On the request of the person or the attorney representing the state, the court shall conduct the hearing before a jury. The burden of proof at that hearing is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.121 (2011). Authorized Petition for Release

(a) If the case manager determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the case manager shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.122 (2011). Right to File Unauthorized Petition for Release

On a person's commitment and annually after that commitment, the case manager shall provide the person with written notice of the person's right to file with the court and without the case manager's authorization a petition for release.

TEX. HEALTH & SAFETY CODE ANN. § 841.123 (2011). Review of Unauthorized Petition for Release

(a) If the committed person files a petition for release without the case manager's authorization, the person shall serve the petition on the court and the attorney representing the state.

(b) On receipt of a petition for release filed by the committed person without the case manager's authorization, the judge shall attempt as soon as practicable to review the petition.

(c) Except as provided by Subsection (d), the judge shall deny without a hearing a petition for release filed without the case manager's authorization if the petition is frivolous or if:

(1) the petitioner previously filed without the case manager's authorization another petition for release; and

(2) the judge determined on review of the previous petition or following a hearing that:

(A) the petition was frivolous; or

(B) the petitioner's behavioral abnormality had not changed to the extent that the petitioner was no longer likely to engage in a predatory act of sexual violence.

(d) The judge is not required to deny a petition under Subsection (c) if probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.124 (2011). Hearing on Unauthorized Petition for Release

(a) If as authorized by Section 841.123 the judge does not deny a petition for release filed by the committed person without the case manager's authorization, the judge shall conduct as soon as practicable a hearing on the petition.

(b) The petitioner and the state are entitled to an immediate examination of the person by an expert.

(c) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(d) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

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VA. CODE. ANN. § 37.2-900 (2012). Definitions

As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or

18.2-67.2, or is set forth in § 18.2-67.3; or (vi) conspiracy to commit or attempt to commit any of the above offenses.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3; and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

VA. CODE. ANN. § 37.2-902 (2012). Commitment Review Committee; membership

A. The Director shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners and defendants for the purposes of this chapter. The CRC shall be under the supervision of the Department of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § 37.2-904 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.

B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director; (ii) three full-time employees of the Department, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Four members shall constitute a quorum.

C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.

VA. CODE. ANN § 37.2-903 (2012). Database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC

A. The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense. The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense, shall remain in the database until such time as he is released from the custody or supervision of the

Department of Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection C, the Director shall order a national criminal history records check to be conducted on the prisoner.

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board (i) who receive a score of five or more on the Static–99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, (ii) who receive a score of four on the Static–99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2–61, 18.2–67.1, 18.2–67.2, or 18.2–67.3 where the victim was under the age of 13, or (iii) whose records reflect such aggravating circumstances that the Director determines the offender appears to meet the definition of a sexually violent predator. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety.

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1–3600 for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.

D. The Commissioner shall forward to the Director the records of all defendants who have been charged with a sexually violent offense and found unrestorably incompetent to stand trial and ordered to be screened pursuant to § 19.2–169.3. The Director, applying the procedure identified in subsection B, shall identify those defendants who shall be referred to the CRC for assessment.

E. Upon the identification of such prisoners and defendants screened pursuant to subsection B, C and D, the Director shall forward their names, their scheduled dates of release, court orders finding the defendants unrestorably incompetent, and copies of their files to the CRC for assessment.

VA. CODE. ANN. § 37.2-904 (2012). CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation

A. Within 180 days of receiving notice from the Director the name of a prisoner or defendant who has been assessed by the Director pursuant to § 37.2–903, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and risk assessment of sex offenders, knowledgeable about the treatment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or defendant is a sexually violent predator, as defined in § 37.2–900, and forward the results of this evaluation and any supporting documents to the CRC for its review.

The CRC assessment may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or defendant (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.2–907 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements. The mental health professional shall not disseminate the contents of the reports or the actual reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed.

VA. CODE. ANN. § 37.2-905 (2012). Review of prisoners convicted of a sexually violent offense; review of unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review

A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court for the judicial circuit or district in which the prisoner was last convicted of a sexually violent offense or in the circuit court for the judicial circuit or district in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or defendant, or if a petition is filed but is dismissed for any reason, the Attorney General and the Director may share any relevant information with the probation and parole officer who is to supervise the prisoner and with the Department to the extent allowed by state and federal law.

VA. CODE. ANN. § 37.2–906 (2012). Probable cause hearing; procedures

A. Upon the filing of a petition alleging that the respondent is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department and (ii) schedule a hearing within 90 days to determine whether probable cause exists to believe that the respondent is a sexually violent predator. The respondent may waive his right to a hearing under this section. A continuance extending the case beyond the 90 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. The clerk shall mail a copy of the petition to the attorney appointed or retained for the respondent and to the person in charge of the facility in which the respondent is then confined. The person in charge of the facility shall cause the petition to be delivered to the respondent and shall certify the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the respondent at the time the petition is delivered.

B. Any hearing or proceeding under this section may be conducted using a two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system shall meet the standards set forth in subsection B of § 19.2–3.1.

C. Prior to any hearing under this section, the judge shall ascertain if the respondent is represented by counsel and, if he is not represented by counsel, the judge shall appoint an attorney to represent him. However, if the respondent requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

D. A respondent who has refused to cooperate with a mental health examination required pursuant to § 37.2–904 may, within 21 days of the retention of counsel or appointment of counsel, rescind his refusal and elect to cooperate with the mental health examination. Counsel for the respondent shall provide written notice of the respondent's election to cooperate with the mental health examination to the court and the attorney for the Commonwealth within 30 days of the retention or appointment of counsel, and the probable cause hearing shall be stayed until 30 days after receipt of the mental health examiner's report. The mental health examination shall be conducted in accordance with subsection B of § 37.2–904. Results of the evaluation shall be filed with the court and copies of the results shall be provided to counsel for the parties. The mental health examiner's itemized account of expenses, duly sworn to, shall be presented to the court and, when allowed, shall be certified to the Supreme Court for payment out of the state treasury and shall be charged against the appropriations made to pay criminal charges. In the event that a respondent refuses to cooperate with the mental health examination required by § 37.2–904 or fails or refuses to cooperate with the mental health examination following rescission of his refusal pursuant to this subsection, the court shall admit evidence of such failure or refusal and shall bar the respondent from introducing his own expert psychiatric and psychological evidence.

E. At the probable cause hearing, the judge shall (i) verify the respondent's identity and (ii) determine whether probable cause exists to believe that he is a sexually violent predator. The existence of any prior convictions or charges may be shown with affidavits or documentary evidence. The details underlying the commission of an offense or behavior that led to a prior conviction or charge may be shown by affidavits or documentary evidence, including but not limited to, hearing and/or trial transcripts, probation and parole and sentencing reports, police and sheriffs' reports, and mental health evaluations. If he meets the qualifications set forth in subsection B of § 37.2–904, the expert witness may be permitted to testify at the probable cause hearing as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendations as to treatment, and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent predator.

F. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the respondent is a sexually violent

predator, the judge shall dismiss the petition, and the respondent shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the respondent is a sexually violent predator, the judge shall dismiss the petition and order that the respondent be discharged, involuntarily admitted pursuant to §§ 37.2–814 through 37.2–819, or certified for admission pursuant to § 37.2–806.

VA. CODE. ANN. § 37.2-908 (2012). Trial; right to trial by jury; standard of proof; discovery

A. Within 120 days after the completion of the probable cause hearing held pursuant to § 37.2-906, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. A continuance extending the case beyond the 120 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.

B. The Attorney General or the respondent shall have the right to a trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines that the respondent is a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, by clear and convincing evidence, the respondent is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the respondent is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections. The Department of Corrections shall immediately release him if his scheduled release date has passed, or hold him until his scheduled release date. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that he is a sexually violent predator, the court shall order that he be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

If he meets the qualifications set forth in subsection B of § 37.2-904 or 37.2-907, any expert witness may be permitted to testify at the trial as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendation as to treatment, and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent predator.

D. If the court or jury finds the respondent to be a sexually violent predator, the court shall then determine that the respondent shall be committed or continue the trial for not less than 45 days nor more than 60 days pursuant to subsection E. A continuance extending the case beyond the 60 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. In making its determination, the court may consider (i) the nature and circumstances of the sexually violent offense for which the respondent was charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test, including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to the

respondent under this chapter; (iv) the respondent's mental history, including treatments for mental illness or mental disorders, participation in and response to therapy or treatment, and any history of previous hospitalizations; (v) the respondent's present mental condition; (vi) the respondent's disciplinary record and types of infractions he may have committed while incarcerated or hospitalized; (vii) the respondent's living arrangements and potential employment if he were to be placed on conditional release; (viii) the availability of transportation and appropriate supervision to ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court deems relevant. If after considering the factors listed in § 37.2-912, the court finds that there is no suitable less restrictive alternative to involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the respondent be committed to the custody of the Department for appropriate inpatient treatment in a secure facility designated by the Commissioner. Respondents committed pursuant to this chapter are subject to the provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).

E. If the court determines to continue the trial to receive additional evidence on possible alternatives to commitment, the court shall require the Commissioner to submit a report to the court, the Attorney General, and counsel for the respondent suggesting possible alternatives to commitment. The court shall then reconvene the trial and receive testimony on the possible alternatives to commitment. At the conclusion of testimony on the possible alternatives to commitment, the court shall consider: (i) the treatment needs of the respondent; (ii) whether less restrictive alternatives to commitment have been investigated and deemed suitable; (iii) whether any such alternatives will accommodate needed and appropriate supervision and treatment plans for the respondent, including but not limited to, therapy or counseling, access to medications, availability of travel, and location of proposed residence; and (iv) whether any such alternatives will accommodate needed and appropriate regular psychological or physiological testing, including but not limited to, penile plethysmograph testing or sexual interest testing. If the court finds these criteria are adequately addressed and the court finds that the respondent meets the criteria for conditional release set forth in § 37.2-912, the court shall order that the respondent be returned to the custody of the Department of Corrections to be processed for conditional release as a sexually violent predator pursuant to his conditional release plan. The court shall also order the respondent to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release. Access to anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this chapter.

F. The Department shall recommend a specific course of treatment and programs for provision of such treatment and shall monitor the respondent's compliance with such treatment as may be ordered by the court under this section, unless the respondent is on parole or probation, in which case the parole or probation officer shall monitor his compliance.

G. In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.

VA. CODE. ANN. § 37.2-911 (2012). Petition for release; hearing; procedures

A. The Commissioner may petition the committing court for conditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer in need of secure inpatient treatment. The Commissioner may petition the committing court for unconditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer a sexually violent predator. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared by the Department. The committed respondent may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.2-910. The party petitioning for release shall transmit a copy of the petition to the Attorney General and the Commissioner.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § 37.2-910.

WASHINGTON

WASH. REV. CODE ANN. § 71.09.020 (2012). Definitions Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) “Less restrictive alternative” means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) “Likely to engage in predatory acts of sexual violence if not confined in a secure facility” means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) “Mental abnormality” means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) “Personality disorder” means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) “Predatory” means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(11) “Prosecuting agency” means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) “Recent overt act” means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

(13) “Risk potential activity” or “risk potential facility” means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, “school bus stops” does not include bus stops established primarily for public transit.

(14) “Secretary” means the secretary of social and health services or the secretary's designee.

(15) “Secure facility” means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71. 09.096.

(16) “Secure community transition facility” means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(17) “Sexually violent offense” means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(18) “Sexually violent predator” means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(19) “Total confinement facility” means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

WASH. REV. CODE ANN. § 71.09.025 (2012). Notice to prosecuting attorney prior to release

(1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020 (16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

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

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to **RCW 10.77.020(3).

(b) The agency shall provide the prosecuting agency with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(c) The prosecuting agency has the authority, consistent with RCW 72.09. 345(3), to obtain all records relating to the person if the prosecuting agency deems such records are necessary to fulfill its duties under this chapter. The prosecuting agency may only disclose such records in the course of performing its duties pursuant to this chapter, unless otherwise authorized by law.

(d) The prosecuting agency has the authority to utilize the inquiry judge procedures of chapter 10.27 RCW prior to the filing of any action under this chapter to seek the issuance of compulsory process for the production of any records necessary for a

determination of whether to seek the civil commitment of a person under this chapter. Any records obtained pursuant to this process may only be disclosed by the prosecuting agency in the course of performing its duties pursuant to this chapter, or unless otherwise authorized by law.

(2) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(3) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

WASH. REV. CODE ANN. § 71.09.030 (2012). Sexually violent predator petition--Filing

(1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that: (a) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement; (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement; (c) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released, pursuant to RCW 10.77.086(4); (d) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released, pursuant to RCW *10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act.

(2) The petition may be filed by:

(a) The prosecuting attorney of a county in which:

(i) The person has been charged or convicted with a sexually violent offense;

(ii) A recent overt act occurred involving a person covered under subsection (1)(e) of this section; or

(iii) The person committed a recent overt act, or was charged or convicted of a criminal offense that would qualify as a recent overt act, if the only sexually violent offense charge or conviction occurred in a jurisdiction other than Washington; or

(b) The attorney general, if requested by the county prosecuting attorney identified in (a) of this subsection. If the county prosecuting attorney requests that the attorney general file and prosecute a case under this chapter, then the county shall charge the attorney general only the fees, including filing and jury fees, that would be charged and paid by

the county prosecuting attorney, if the county prosecuting attorney retained the case.

WASH. REV. CODE ANN. § 71.09.040 (2012). Sexually violent predator petition--Probable cause hearing--Judicial determination--Transfer for evaluation

(1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody and notify the office of public defense of the potential need for representation.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, 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 violent predator. In order to assist the person at the hearing, within twenty-four hours of service of the petition, the prosecuting agency shall provide to the person or his or her counsel a copy of all materials provided to the prosecuting agency by the referring agency pursuant to RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony. The person may be held in total confinement at the county jail until the trial court renders a decision after the conclusion of the seventy-two hour probable cause hearing. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel, and if the person is indigent as defined in RCW 10.101.010, to have office of public defense contracted counsel appointed as provided in RCW 10.101.020; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file. The court must permit a witness called by either party to testify by telephone. Because this is a special proceeding, discovery pursuant to the civil rules shall not occur until after the hearing has been held and the court has issued its decision.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred the custody of the department of social and health services for placement in a total confinement facility operated by the department. In no event shall the person be released from confinement prior to trial.

WASH. REV. CODE ANN. § 71.09.050 (2012). Trial--Rights of parties

(1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a

showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests if requested by the evaluator: (a) A clinical interview; (b) psychological testing; (c) plethysmograph testing; and (d) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent as defined in RCW 10.101.010, the court, as provided in RCW 10.101.020, shall appoint office of public defense contracted counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any indigent person is subjected to an evaluation under this chapter, the office of public defense is responsible for the cost of one expert or professional person to conduct an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, the expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the trial on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(3) The person, the prosecuting agency, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court.

WASH. REV. CODE ANN. § 71.09.060 (2012). Trial--Determination--Commitment procedures

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in *RCW 71.09.020(15)(c), the state must prove beyond a

reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, 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. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, 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 his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) Except as otherwise provided in this chapter, the state shall comply with RCW 10.77.220 while confining the person. During all court proceedings where the person is present, the person shall be detained in a secure facility. If the proceedings last more than

one day, the person may be held in the county jail for the duration of the proceedings, except the person may be returned to the department's custody on weekends and court holidays if the court deems such a transfer feasible. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter.

WASH. REV. CODE ANN. § 71.09.070 (2012). Annual examinations of persons committed under chapter

Each person committed under this chapter shall have a current examination of his or her mental condition made by the department of social and health services at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. The department of social and health services shall file this periodic report with the court that committed the person under this chapter. The report shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined by rules adopted by the secretary. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person and his or her counsel. The committed person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person.

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WIS. STAT. ANN. § 980.01 (2011). Definitions

In this chapter:

(1b) “Act of sexual violence” means conduct that constitutes the commission of a sexually violent offense.

(1d) “Agency with jurisdiction” means the agency with the authority or duty to release or discharge the person.

(1h) “Department” means the department of health services.

(1j) “Incarceration” includes confinement in a juvenile correctional facility, as defined in s. 938.02(10p), or a secured residential care center for children and youth, as defined in s. 938.02(15g), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(1m) “Likely” means more likely than not.

(2) “Mental disorder” means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(3) Except in ss. 980.075, 980.09, and 980.095, “ petitioner” means the agency or person that filed a petition under s. 980.02.

(4) “Secretary” means the secretary of health services.

(4m) “Serious child sex offender” means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02(1) or (2), 948.025(1), or 948.085 against a child who had not attained the age of 13 years.

(5) “Sexually motivated” means that one of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

(6) “Sexually violent offense” means any of the following:

(a) Any crime specified in s. 940.225(1), (2), or (3), 948.02(1) or (2), 948.025, 948.06, 948.07, 948.085.

(am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a).

(b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19(2), (4), (5), or (6), 940.195(4) or (5), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948. 03 that is determined, in a proceeding under s. 980.05(3)(b), to have been sexually motivated.

(bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05(3)(b), to have been sexually motivated.

(c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a), (am), (b), or (bm).

(7) “Sexually violent person” means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.

(8) “Significant progress in treatment” means that the person has done all of the following:

(a) Meaningfully participated in the treatment program specifically designed to reduce his or her risk to reoffend offered at a facility described under s. 980.065.

(b) Participated in the treatment program at a level that was sufficient to allow the identification of his or her specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.

(c) Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to his or her sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.

(d) Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

(9) “Substantially probable” means much more likely than not.

(10) “Treating professional” means a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment at a facility described under s. 980.065.

WIS. STAT. ANN. § 980.015 (2011). Notice to the department of justice and district attorney

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 90 days prior to the applicable date of the following:

(a) The anticipated discharge or release, on parole, extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration, any part of which was imposed for a sexually violent offense, or from a placement in a Type 1 prison under s. 301.048(3)(a)1., any part of which was required as a result of a conviction for a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 938.02(10p), or a secured residential care center for children and youth, as defined in s. 938.02(15g), if the person was placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The anticipated release of a person on conditional release under s. 971.17, the anticipated termination of a commitment order under 971.17, or the anticipated discharge of a person from a commitment order under s. 971.17, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(d) The anticipated release on parole or discharge of a person committed under ch. 975 for a sexually violent offense.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

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

(b) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

WIS. STAT. ANN. § 980.02 (2011). Sexually violent person petition; contents; filing

(1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department of justice at the request of the agency with jurisdiction over the person.

(b) If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02(10p), from a residential care center for children and youth, as defined in s. 938.02(15g), or from a commitment order.

3. The county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02(15g), or a commitment order.

(1m) A petition filed under this section shall be filed before the person is released or discharged.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder makes it likely that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2)(a) was an act that was sexually motivated as provided under s. 980.01(6)(b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in one of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02(10p), from a secured residential care center for children and youth, as defined in s. 938.02(15g), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02(10p), a secured

residential care center for children and youth, as defined in s. 938.02(15g), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1)(a), it may file the petition in the circuit court for Dane County.

(6) A court assigned to exercise jurisdiction under chs. 48 and 938 does not have jurisdiction over a petition filed under this section alleging that a person who was adjudicated delinquent as a child is a sexually violent person.

WIS. STAT. ANN. § 980.031 (2011). Examinations

(1) If a person who is the subject of a petition filed under s. 980.02 denies the facts alleged in the petition, the court may appoint at least one qualified licensed physician, licensed psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial.

(2) The state may retain a licensed physician, licensed psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition under s. 980.02 or who has been committed under s. 980.06 and to testify at trial or at any other proceeding under this chapter at which testimony is authorized.

(3) Whenever a person who is the subject of a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination of his or her mental condition under this chapter, he or she may retain a licensed physician, licensed psychologist, or other mental health professional to perform an examination. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available licensed physician, licensed psychologist, or other mental health professional to perform an examination of the person's mental condition and participate on the person's behalf in a trial or other proceeding under this chapter at which testimony is authorized. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a licensed physician, licensed psychologist, or other mental health professional appointed by a court under this subsection to perform an examination and participate in the trial or other proceeding on behalf of an indigent person.

(4) If a party retains or the court appoints a licensed physician, licensed psychologist, or other mental health professional to conduct an examination under this chapter of the person's mental condition, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30(1)(b), and patient health care records as provided under s. 146.82(2) (cm), past and present juvenile records, as provided under ss. 48.396(6), 48.78(2)(e), 938.396(10), and 938.78(2)(e), and the person's past and present correctional records, including presentence investigation reports under s. 972.15(6).

(5) A licensed physician, licensed psychologist, or other mental health professional who is expected to be called as a witness by one of the parties or by the court may not be subject to any order by the court for the sequestration of witnesses at any proceeding

under this chapter. No licensed physician, licensed psychologist, or other mental health professional who is expected to be called as a witness by one of the parties or by the court may testify at any proceeding under this chapter unless a written report of his or her examination has been submitted to the court and to both parties at least 10 days before the proceeding.

WIS. STAT. ANN. § 980.036 (2011). Discovery and inspection

(1) Definitions. In this section:

(a) "Person subject to this chapter" means a person who is subject to a petition filed under s. 980.02 or a person who has been committed under s. 980.06.

(b) "Prosecuting attorney" means an attorney representing the state in a proceeding under this chapter.

(2) What a prosecuting attorney must disclose to a person subject to this chapter. Upon demand, a prosecuting attorney shall disclose to a person subject to this chapter or his or her attorney, and permit the person subject to this chapter or his or her attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the state:

(a) Any written or recorded statement made by the person subject to this chapter concerning the allegations in the petition filed under s. 980.02 or concerning other matters at issue in the trial or proceeding and the names of witnesses to the written statements of the person subject to this chapter.

(b) A written summary of all oral statements of the person subject to this chapter that the prosecuting attorney plans to use at the trial or proceeding and the names of witnesses to the oral statements of the person subject to this chapter.

(c) Evidence obtained in the manner described under s. 968.31(2)(b), if the prosecuting attorney intends to use the evidence at the trial or proceeding.

(d) A copy of the criminal record of the person subject to this chapter.

(e) A list of all witnesses whom the prosecuting attorney intends to call at the trial or proceeding, together with their addresses. This paragraph does not apply to rebuttal witnesses or witnesses called for impeachment only.

(f) Any relevant written or recorded statements of a witness listed under par. (e), including all of the following:

1. Any videotaped oral statement of a child under s. 908.08.

2. Any reports prepared in accordance with s. 980.031(5).

(g) The criminal record of a witness listed under par. (e) that is known to the prosecuting attorney.

(h) The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the prosecuting attorney intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

(i) Any physical or documentary evidence that the prosecuting attorney intends to offer in evidence at the trial or proceeding.

(j) Any exculpatory evidence.

(3) What a person subject to this chapter must disclose to the prosecuting attorney. Upon demand, a person who is subject to this chapter or his or her attorney shall disclose to the prosecuting attorney, and permit the prosecuting attorney to inspect and copy or photograph, all of the following materials and information, if the material or information is within the possession, custody, or control of the person who is subject to this chapter or his or her attorney:

(a) A list of all witnesses, other than the person who is subject to this chapter, whom the person who is subject to this chapter intends to call at the trial or proceeding, together with their addresses. This paragraph does not apply to rebuttal witnesses or witnesses called for impeachment only.

(b) Any relevant written or recorded statements of a witness listed under par. (a), including any reports prepared in accordance with s. 980.031(5).

(c) The criminal record of a witness listed under par. (a) if the criminal record is known to the attorney for the person who is subject to this chapter.

(d) The results of any physical or mental examination or any scientific or psychological test, instrument, experiment, or comparison that the person who is subject to this chapter intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison.

(e) Any physical or documentary evidence that the person who is subject to this chapter intends to offer in evidence at the trial or proceeding.

(3m) When disclosure must be made. A party required to make a disclosure under this section shall do so within a reasonable time after the probable cause hearing and within a reasonable time before a trial under s. 980.05, if the other party's demand is made in connection with a trial. If the demand is made in connection with a proceeding under s.

980.08 or 980.09(3), the party shall make the disclosure within a reasonable time before the start of that proceeding.

(4) Comment or instruction on failure to call witness. No comment or instruction regarding the failure to call a witness at the trial may be made or given if the sole basis for the comment or instruction is the fact that the name of the witness appears upon a list furnished under this section.

(5) Testing or analysis of evidence. On motion of a party, the court may order the production of any item of evidence or raw data that is intended to be introduced at the trial for testing or analysis under such terms and conditions as the court prescribes.

(6) Protective order. Upon motion of a party, the court may at any time order that discovery, inspection, or the listing of witnesses required under this section be denied, restricted, or deferred, or make other appropriate orders. If the prosecuting attorney or the attorney for a person subject to this chapter certifies that listing a witness under sub. (2)(e) or (3)(a) may subject the witness or others to physical or economic harm or coercion, the court may order that the deposition of the witness be taken under s. 967.04(2) to (6). The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at trial as substantive evidence.

(7) In camera proceedings. Either party may move for an in camera inspection of any document required to be disclosed under sub. (2) or (3) for the purpose of masking or deleting any material that is not relevant to the case being tried. The court shall mask or delete any irrelevant material.

(8) Continuing duty to disclose. If, after complying with a requirement of this section, and before or during trial, a party discovers additional material or the names of additional witnesses requested that are subject to discovery, inspection, or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

(9) Sanctions for failure to comply. (a) The court shall exclude any witness not listed or evidence not presented for inspection, copying, or photographing required by this section, unless good cause is shown for failure to comply. The court may in appropriate cases grant the opposing party a recess or a continuance.

(b) In addition to or in place of any sanction specified in par. (a), a court may, subject to sub. (4), advise the jury of any failure or refusal to disclose material or information required to be disclosed under sub. (2) or (3), or of any untimely disclosure of material or information required to be disclosed under sub. (2) or (3).

(10) Payment of copying costs in cases involving indigent respondents. When the state public defender or a private attorney appointed under s. 977.08 requests copies, in any format, of any item that is discoverable under this section, the state public defender shall

pay any fee charged for the copies from the appropriation account under s. 20.550(1)(a). If the person providing copies under this section charges the state public defender a fee for the copies, the fee may not exceed the applicable maximum fee for copies of discoverable materials that is established by rule under s. 977.02(9).

(11) Exclusive method of discovery. Chapter 804 does not apply to proceedings under this chapter. This section provides the only methods of obtaining discovery and inspection in proceedings under this chapter.

WIS. STAT. ANN. § 980.038 (2011). Miscellaneous procedural provisions

(1) Motions challenging jurisdiction or competency of court or timeliness of petition. (a) A motion challenging the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02 shall be filed within 30 days after the court holds the probable cause hearing under s. 980.04(2). Failure to file a motion within the time specified in this paragraph waives the right to challenge the jurisdiction or competency of the court or the timeliness of a petition filed under s. 980.02.

(b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over a person who is the subject of a petition filed under s. 980.02 even though the person is not served as provided under s. 801.11(1) or (2) with a verified petition and summons or with an order for detention under s. 980.04(1) and the person has not had a probable cause hearing under s. 980.04(2).

(2) Evidence of refusal to participate in examination. (a) At any hearing under this chapter, the state may present evidence or comment on evidence that a person who is the subject of a petition filed under s. 980.02 or a person who has been committed under this chapter refused to participate in an examination of his or her mental condition that was being conducted under this chapter or that was conducted for the purpose of evaluating whether to file a petition before the petition under s. 980.02 was filed.

(b) A licensed physician, licensed psychologist, or other mental health professional may indicate in any written report that he or she prepares in connection with a proceeding under this chapter that the person whom he or she examined refused to participate in the examination.

(3) Testimony by telephone or live audiovisual means. Unless good cause to the contrary is shown, proceedings under ss. 980.04(2)(a) and 980.08(7)(d) may be conducted by telephone or audiovisual means, if available. If the proceedings are required to be reported under SCR 71.02(2), the proceedings shall be reported by a court reporter who is in simultaneous voice communication with all parties to the proceeding. Regardless of the physical location of any party to the telephone call, any action taken by the court or any party has the same effect as if made in open court. A proceeding under this subsection shall be conducted in a courtroom or other place reasonably accessible to the public. Simultaneous access to the proceeding shall be provided to a person entitled to attend by means of a loudspeaker or, upon request to the court, by making the person party to the telephone call without charge.

(4) Motions for postcommitment relief; appeal. (a) A motion for postcommitment relief by a person committed under s. 980.06 shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal by a person who has been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for postcommitment relief or from both shall be taken in the time and manner provided in ss. 808.04(3) and 809.30 to 809.32. If a person is seeking relief from an order of commitment under s. 980.06, the person shall file a motion for postcommitment relief in the trial court prior to an appeal unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(b) An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04(4) and in the manner provided for civil appeals under chs. 808 and 809.

(5) Failure to comply with time limits; effect. Failure to comply with any time limit specified in this chapter does not deprive the circuit court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure to comply with any time limit specified in this chapter is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered under this chapter. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance.

(6) Errors and defects not affecting substantial rights. The court shall, in every stage of a proceeding under this chapter, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

WIS. STAT. ANN. § 980.04 (2011). Detention; probable cause hearing; transfer for examination

(1) Upon the filing of a petition under s. 980.02, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is probable cause to believe that the person is eligible for commitment under s. 980.05(5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02(15g), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the petition is dismissed after a hearing under sub. (3) or after a trial under s. 980.05(5) or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2)(a) Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person.

(b)1. Except as provided in subd. 2., the court shall hold the probable cause hearing within 30 days, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties.

2. If the person named in the petition is in custody under a sentence, dispositional order, or commitment and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged from the sentence, dispositional order, or commitment, the probable cause hearing under par. (a) shall be held no later than 10 days after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause shown upon its own motion, the motion of any party, or the stipulation of the parties.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility specified by the department for an evaluation by the department as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. (3).

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2)(a), refer the person to the authority for indigency determinations under s. 977.07(1) and, if applicable, the appointment of counsel.

WIS. STAT. ANN. § 980.05 (2011). Trial

(1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 90 days after the date of the probable cause hearing under s. 980.04(2)(a). The court may grant one or more continuances of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(2) The person who is the subject of the petition, the person's attorney, or the petitioner may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04(2)(a). If no request is made, the trial shall be to the court. The person, the person's attorney, or the petitioner may withdraw his, her, or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

(2m)(a) At a jury trial under this section, juries shall be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that,

notwithstanding s. 805.08(3), each party shall be entitled to 4 peremptory challenges or, if the court orders additional jurors to be selected under s. 805.08(2), to 5 peremptory challenges. A party may waive in advance any or all of its peremptory challenges and the number of jurors called under par. (b) shall be reduced by this number.

(b) The number of jurors selected shall be the number prescribed in sub. (2), unless a lesser number has been stipulated to and approved under par. (c) or the court orders that additional jurors be selected. That number of jurors, plus the number of peremptory challenges available to all of the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(c) At any time before the verdict in a jury trial under this section, the parties may stipulate in writing or by statement in open court, on the record, with the approval of the court, that the jury shall consist of any number less than the number prescribed in sub. (2).

(3)(a) At a trial on a petition under this chapter, the petitioner has the burden of proving beyond a reasonable doubt that the person who is the subject of the petition is a sexually violent person.

(b) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in s. 980.01(6)(b) or (bm), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

WIS. STAT. ANN. § 980.06 (2011). Commitment

If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

WIS. STAT. ANN. § 980.07 (2011). Periodic reexamination and treatment progress; report from the department

(1) If a person is committed under s. 980.06 and has not been discharged under s. 980.09(4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner shall apply the criteria under s. 980.08(4)(cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09(3) when considering if the person should be discharged. At the time of a reexamination under this section, the person who has been committed may retain or have the court appoint an examiner as provided under s. 980.031(3). The county shall pay the costs of an examiner appointed by the court as provided under s. 51.20(18)(a).

(2) Any examiner conducting a reexamination under sub. (1) shall prepare a written report of the reexamination no later than 30 days after the date of the reexamination. The examiner shall provide a copy of the report to the department.

(3) Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any reexamination ordered under this subsection shall conform to sub. (1).

(4) At any reexamination under sub. (1), the treating professional shall prepare a treatment progress report. The treating professional shall provide a copy of the treatment progress report to the department. The treatment progress report shall consider all of the following:

(a) The specific factors associated with the person's risk for committing another sexually violent offense.

(b) Whether the person has made significant progress in treatment or has refused treatment.

(c) The ongoing treatment needs of the person.

(d) Any specialized needs or conditions associated with the person that must be considered in future treatment planning.

(5) Any examiners under sub. (1) and treating professionals under sub. (4) shall have reasonable access to the person for purposes of reexamination, to the person's past and present treatment records, as defined in s. 51.30(1)(b), and to the person's patient health care records, as provided under s. 146.82(2)(c).

(6) The department shall submit an annual report comprised of the reexamination report under sub. (1) and the treatment progress report under sub. (4) to the court that committed the person under s. 980.06. A copy of the annual report shall be placed in the person's treatment records. The department shall provide a copy of the annual report to the person committed under s. 980.06, the department of justice, and the district attorney, if applicable. The court shall provide a copy of the annual report to the person's attorney as soon as he or she is retained or appointed.

(6m) If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

WIS. STAT. ANN. § 980.075 (2011). Patient petition process

(1) When the department submits its report to the court under s. 980.07(6), the person who has been committed under s. 980.06 may retain or have the court appoint an attorney as provided in s. 980.03(2)(a).

(1m)(a) When the department provides a copy of the report under s. 980.07(6) to the person who has been committed under s. 980.06, the department shall provide to the person a standardized petition form for supervised release under s. 980.08 and a standardized petition form for discharge under s. 980.09.

(b) The department shall, after consulting with the department of justice and the state public defender, develop the standardized petition forms required under par. (a).

(2)(a) Within 30 days after the department submits its report to the court under s. 980.07(6), the person who has been committed under s. 980.06 or his or her attorney may submit one of the completed forms provided under sub. (1m) to the court to initiate either a petition for supervised release or a petition for discharge.

(b) If no completed petition is filed in a timely manner under par. (a), the person who has been committed under s. 980.06 will remain committed and the person's placement at a facility described under s. 980.065 or the person's supervised release status under s. 980.08 remains in effect without review by the court.

(3) If the person files a petition for discharge under s. 980.09 without counsel, the court shall serve a copy of the petition and any supporting documents on the district attorney or department of justice, whichever is applicable. If the person petitions for discharge under s. 980.09 through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(4)(a) The petitioner may use experts or professional persons to support his or her petition.

(b) The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

(5) Subject to s. 980.03(2)(a), before proceeding under s. 980.08 or 980.09 but as soon as circumstances permit, the court shall refer the matter to the authority for indigency determinations under s. 977.07(1) and appointment of counsel under s. 977.05(4)(j) if the person is not represented by counsel.

(6) At any time before a hearing under s. 980.08 or 980.09, the department may file a supplemental report if the department determines that court should have additional information.

WIS. STAT. ANN. § 980.08 (2011). Supervised release; procedures, implementation, revocation

(1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.03(2)(a), refer the matter to the authority for indigency determinations under s. 977.07(1) and appointment of counsel under s. 977.05(4)(j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

(3) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30(1)(b), and patient health care records, as provided under s. 146.82(2)(c). If any such examiner believes that the person is appropriate for supervised release under the criteria specified in sub. (4)(cg), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under this subsection as provided under s. 51.20(18)(a).

(4)(a) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the court for good cause

extends this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20(18)(b), (c), and (d).

(c) In making a decision under par. (cg), the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02(2)(a), the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under par. (cg) on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(cg) The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that all of the following criteria are met:

1. The person has made significant progress in treatment and the person's progress can be sustained while on supervised release.

2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.

3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.

4. The person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.

5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

(cm) If the court finds that all of the criteria in par. (cg) are met, the court shall select a county to prepare a report under par. (e). Unless the court has good cause to select another county, the court shall select the person's county of residence as determined by the department under s. 980.105. The court may not select a county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also that person's county of residence.

(d) The court shall authorize the petitioner, the person's attorney, the district attorney, any law enforcement agency in the county of intended placement, and any local governmental

unit in the county of intended placement to submit prospective residential options for community placement to the department within 60 days following the selection of the county under par. (cm).

(e) The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health services, identifying prospective residential options for community placement. In identifying prospective residential options, the county department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46(2m)(a) or (am). The county department shall submit its report to the department within 60 days following the court order.

(f) The court shall direct the department to use any submissions under par. (d), the report submitted under par. (e), or other residential options identified by the department to prepare a supervised release plan for the person. The department shall prepare a supervised release plan that identifies the proposed residence. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The supervised release plan shall be submitted to the court within 90 days of the finding under par. (cg). The court may grant extensions of this time period for good cause.

(g) The court shall review the plan submitted by the department under par. (cm). If the details of the plan adequately meet the treatment needs of the individual and the safety needs of the community, then the court shall approve the plan and determine that supervised release is appropriate. If the details of the plan do not adequately meet the treatment needs of the individual or the safety needs of the community, then the court shall determine that supervised release is not appropriate or direct the preparation of another supervised release plan to be considered by the court under this paragraph.

(5m) The department may not arrange placement under this section in a facility that did not exist before January 1, 2006.

(6m) An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (4)(g). A person on supervised release is subject to the conditions set by the court and to the rules of the department. Within 10 days of imposing a rule, the department shall file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If the department wants to change a rule or condition of supervision imposed by the court, the department must obtain the court's approval. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality

and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

(7)(a) If the department believes that a person on supervised release, or awaiting placement on supervised release, has violated, or threatened to violate, any condition or rule of supervised release, the department may petition for revocation of the order granting supervised release as described in par. (c) or may detain the person.

(b) If the department believes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, the department shall detain the person and petition for revocation of the order granting supervised release as described in par. (c).

(c) If the department concludes that the order granting supervised release should be revoked, it shall file with the committing court a statement alleging the violation and or threat of a violation and a petition to revoke the order for supervised release and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the regional office of the state public defender within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. Pending the revocation hearing, the department may detain the person in a jail or a facility described under s. 980.065. The court shall refer the matter to the authority for indigency determinations under s. 977.07(1) and appointment of counsel under s. 977.05(4)(j). The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(d) The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. A final decision on the petition to revoke the order for supervised release shall be made within 90 days of the filing. Pending the revocation hearing, the department may detain the person in the county jail or return him or her to institutional care.

(8)(a) If the court finds after a hearing, by clear and convincing evidence, that any rule or condition of release has been violated and the court finds that the violation of the rule or condition merits the revocation of the order granting supervised release, the court may revoke the order for supervised release and order that the person be placed in institutional care. The court may consider alternatives to revocation. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed again on supervised release under sub. (4)(g).

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked the court shall revoke the order for supervised release and order that the person be placed in institutional care. The person

shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed on supervised release under sub. (4)(g).

(9)(a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's home except for outings that are under the direct supervision of a department of corrections escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs.

(b) The department of corrections may contract for the escort services under par. (a).

WIS. STAT. ANN. § 980.09 (2011). Petition for discharge

A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury may conclude the person's condition has changed since the date of his or her initial commitment order so that the person does not meet the criteria for commitment as a sexually violent person.

(2) The court shall review the petition within 30 days and may hold a hearing to determine if it contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. In determining under this subsection whether facts exist that might warrant such a conclusion, the court shall consider any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the petition does not contain facts from which a court or jury may conclude that the person does not meet the criteria for commitment, the court shall deny the petition. If the court determines that facts exist from which a court or jury could conclude the person does not meet criteria for commitment the court shall set the matter for hearing.

(3) The court shall hold a hearing within 90 days of the determination that the petition contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.

(4) If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the petitioner shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court may proceed under s. 980.08(4) to determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

WIS. STAT. ANN. § 980.095 (2011). Procedures for discharge hearings

(1) Use of juries. (a) The district attorney or the department of justice, whichever filed the original petition, or the petitioner or his or her attorney may request that a hearing under

s. 980.09(3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the filing of the petition for discharge.

(b) Juries shall be selected and treated in the same manner as they are selected and treated in civil actions in circuit court. The number of jurors prescribed in par. (a), plus the number of peremptory challenges available to all of the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(c) No verdict shall be valid or received unless at least 5 of the jurors agree to it.

(2) Post verdict motions. Motions after verdict may be made without further notice upon receipt of the verdict.

(3) Appeals. Any party may appeal an order under this subsection as a final order under chs. 808 and 809.

WIS. STAT. ANN. § 980.101 (2011). Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect

(1) In this section, "judgment relating to a sexually violent offense" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02(2)(a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02(2)(a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05(5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody of the department.

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02(2)(a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02(2)(a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an order entered under sub. (2) as from a final judgment.

WYOMING

FEDERAL LEGISLATION

The current sex offender civil commitment scheme has been held unconstitutional by the district court decisions below.

1) U.S. v. Wilkinson, 626 F.Supp.2d 184, 184 (D.Mass. Jun 22, 2009).
2) U.S. v. Tom, 558 F.Supp.2d 931, 932 (D.Minn. May 23, 2008).
3) U.S. v. Shields, 522 F.Supp.2d 317, 319 (D.Mass. Nov 07, 2007).

18 U.S.C.A. § 4248 (2011). Civil commitment of a sexually dangerous person

(a) Institution of proceedings.--In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report.--Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.--The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition.--If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall

release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until--

(1) such a State will assume such responsibility; or

(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier.

(e) Discharge.--When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that--

(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall--

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge.--The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection

(e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) Release to State of certain other persons.--If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.

AMERICAN SAMOA

GUAM

PUERTO RICO

VIRGIN ISLANDS