

SENATE BILL No. 98

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-26-17.

Synopsis: Commitment of sexually violent predators. Provides for the civil commitment for an indeterminate period of a person who is found to be a sexually violent predator. Provides that the intent of the civil commitment is to provide treatment for a person with a serious mental disorder and then return the person to the community. Applies to a person who: (1) has been charged or convicted of a Class A or Class B felony sex offense; and (2) suffers from a mental abnormality that makes the person likely to engage in predatory acts of sexual violence if the person is not confined in a secure facility. Provides that before a
(Continued next page)

Effective: July 1, 1998.

Zakas, Alexa, Bray

January 8, 1998, read first time and referred to Committee on Judiciary.



Digest Continued

person who may be a sexually violent predator may be released from confinement, the releasing authority shall inform a three member review committee consisting of two psychiatrists or psychologists and one prosecuting attorney or deputy prosecuting attorney with experience prosecuting sex offense cases that the person may be a sexually violent predator. Establishes procedures for a determination of probable cause, a hearing, and other procedural safeguards. Provides that if a person is determined by a court to be a sexually violent predator, the person must be committed to a state institution. Provides procedures for the evaluation and review of a person who is committed. Provides that the person is to be committed for the period that the person's mental abnormality exists to the extent that: (1) the person is not safe to be released back into the community; and (2) if released, the person is likely to engage in acts of sexual violence.



Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

SENATE BILL No. 98

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-26-17 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]:

4 **Chapter 17. Commitment of Sexually Violent Predators**
5 **Sec. 1. As used in this chapter, "agency" means an agency that**
6 **releases upon lawful order or authority a person serving a sentence**
7 **or term of confinement. The term includes:**
8 **(1) the department of correction; and**
9 **(2) the division of mental health.**

10 **Sec. 2. As used in this chapter, "mental abnormality" means a**
11 **congenital or acquired condition affecting the emotional or**
12 **volitional capacity that predisposes a person to commit sexually**
13 **violent offenses to a degree that makes the person a menace to the**
14 **health and safety of others.**

15 **Sec. 3. As used in this chapter, "predatory act" means an act**



1 committed by a person for the primary purpose of victimization
2 against:

- 3 (1) a stranger; or
4 (2) an individual with whom the person has a relationship.

5 Sec. 4. As used in this chapter, "review committee" refers to the
6 end of sentence review committee established by section 8 of this
7 chapter.

8 Sec. 5. As used in this chapter, "sexually violent offense" means:

- 9 (A) rape (IC 35-42-4-1);
10 (B) criminal deviate conduct (IC 35-42-4-2);
11 (C) child molesting (IC 35-42-4-3)(a);
12 (D) vicarious sexual gratification (IC 35-42-4-5) as a Class
13 A or Class B felony;
14 (E) sexual misconduct with a minor as a Class A or Class
15 B felony (IC 35-42-4-9); or
16 (F) incest (IC 35-46-1-3) as a Class B felony.

17 Sec. 6. As used in this chapter, "sexually violent predator"
18 means a person who:

- 19 (1) has been convicted of or charged with a sexually violent
20 offense; and
21 (2) suffers from a mental abnormality that makes the person
22 likely to engage in predatory acts of sexual violence if not
23 confined in a secure facility.

24 Sec. 7. (a) Whenever it appears that a person may be a sexually
25 violent predator, an agency confining the person shall give written
26 notice to the review committee one hundred eighty days (180)
27 before any of the following occurs:

- 28 (1) The date of release from total confinement of the person if
29 the person has been convicted of a sexually violent offense.
30 However, in the case of a person who is returned to
31 confinement for not more than one hundred eighty (180) days
32 as a result of revocation of postrelease supervision, written
33 notice shall be given as soon as practicable following the
34 person's readmission to confinement.
35 (2) The date of release of the person if the person has been
36 charged with a sexually violent offense and has been adjudged
37 incompetent to stand trial under IC 35-36-3.
38 (3) The date of release of the person if the person has been
39 found not guilty by reason of insanity of a sexually violent
40 offense under IC 35-36-2-4.

41 (b) The notice required under subsection (a) must provide the
42 review committee the following:



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

3 (2) Documentation of the confined person's institutional
4 adjustment and any treatment received.

5 (c) An agency, its employees, officials, members of the review
6 committee, and individuals contracting, appointed, or volunteering
7 to perform services under this chapter are immune from liability
8 for any good faith conduct under this chapter.

9 Sec. 8. (a) The end of sentence review committee is established.

10 (b) The review committee consists of the following three (3)
11 members:

12 (1) A board certified psychiatrist or clinical psychologist who
13 is:

14 (A) employed by the state; and

15 (B) appointed by the governor.

16 (2) A board certified psychiatrist or clinical psychologist who
17 is:

18 (A) not employed by the state; and

19 (B) appointed by the governor.

20 (3) A current or former prosecuting attorney or deputy
21 prosecuting attorney with experience prosecuting sex offenses
22 appointed by the attorney general.

23 (c) The review committee shall review available records of each
24 person referred to the team under section 7(a) of this chapter. The
25 review committee, not more than thirty (30) days after receiving
26 notice under section 7(a) of this chapter, shall assess whether the
27 person who is the subject of the notice is a sexually violent
28 predator.

29 (d) Whenever the review committee determines that the person
30 is a sexually violent predator under this section, the review
31 committee shall:

32 (1) notify the attorney general of its assessment;

33 (2) inform the attorney general regarding the information
34 described in section 7(b) of this chapter; and

35 (3) cooperate in collecting data and referring information to
36 the attorney general as described in section 9 of this chapter.

37 (e) The attorney general shall review the records of each person
38 the review committee refers to the attorney general under this
39 section. The assessment of the review committee must be available
40 to the attorney general.

41 (f) The attorney general shall determine whether a confined
42 person is a sexually violent predator.



1 **Sec. 9. (a) This section applies when the review committee:**

2 (1) determines that a confined person is a sexually violent
3 predator; and

4 (2) refers the case to the attorney general.

5 (b) The attorney general is dependent upon the submitting
6 agency and the review committee to make all reasonable efforts to
7 gather the necessary information that must precede the decision to
8 file a petition charging a person with being a sexually violent
9 predator. If the initial data collection is incomplete, the attorney
10 general shall:

11 (1) inform the review committee of the respects in which the
12 document collection is incomplete; and

13 (2) request further document collection before the attorney
14 general decides to file or decline the case.

15 **If the review committee, after reasonable efforts, has attempted**
16 **but has been unable to obtain necessary documents, the attorney**
17 **general shall attempt to obtain those documents.**

18 (c) Information gathered under subsection (b) must include
19 expert reports describing:

20 (1) the offender's social history;

21 (2) whether the offender currently has a mental abnormality;

22 (3) the present likelihood the person may engage in predatory
23 acts of sexual violence; and

24 (4) the underlying facts or data for the expert's findings and
25 opinions.

26 (d) Information gathered under subsection (b) may include the
27 following:

28 (1) Additional written or taped statements from material
29 witnesses, including any person who was a material witness to
30 a prior sexually violent offense involving the offender.

31 (2) Additional written or taped statements from witnesses in
32 the institution who were involved in delivering treatment
33 services or supervising the person under investigation, during
34 all previous periods of confinement.

35 **Sec. 10. The attorney general may not file a petition charging a**
36 **person with being a sexually violent predator unless each of the**
37 **following requirements are met:**

38 (1) The offender has not been paroled from the department of
39 correction, on the most recent offense, based upon a finding
40 that the offender was fit for release.

41 (2) The victim or the victim's family has been consulted by the
42 attorney general or the attorney general's agent regarding the



1 potential filing of the petition.

2 (3) The willingness of a victim of a sexually violent offense
3 committed by the offender, regardless of whether the offense
4 resulted in a criminal charge or conviction, to testify in the
5 proceedings has been considered.

6 (4) The offender has a pattern of prior predatory acts. The
7 offender's declarations, if any, or intent to commit predatory
8 acts in the future must be considered in analyzing the pattern.

9 (5) A petition may not be filed if the offender has been
10 released from custody for a substantial time, during which the
11 offender has not engaged in:

12 (A) a sex offense; or

13 (B) any other activity indicating a continuation of the
14 offender's predatory behavior.

15 **Sec. 11. (a)** After the attorney general receives written notice
16 from the review committee under section 8 of this chapter and the
17 prerequisites set forth in sections 9 and 10 have been met, the
18 attorney general may file a petition for a finding of probable cause
19 in the circuit or superior court having jurisdiction. The
20 appropriate venue for the filing is either the county where the
21 respondent:

22 (1) was most recently convicted of a sexually violent offense;
23 or

24 (2) is currently being detained.

25 Whenever a person is civilly committed under this chapter, the
26 jurisdiction of the court that commits the person continues until
27 the time the person is unconditionally discharged.

28 (b) The petition must:

29 (1) allege that the person who is named respondent in the
30 petition is a sexually violent predator; and

31 (2) state sufficient facts to support the allegation.

32 **Sec. 12. (a)** Upon the filing of a petition under section 11 of this
33 chapter, the court shall determine whether probable cause exists
34 to believe that the person named respondent in the petition is a
35 sexually violent predator. If the court determines that there is
36 probable cause to believe the person is a sexually violent predator,
37 the court shall order that the person remain in the custody of the
38 agency having custody of the person until a final disposition is
39 made under section 13 of this chapter.

40 (b) Not more than seventy-two (72) hours after a person is
41 detained under subsection (a), the person is entitled to notice of and
42 an opportunity to appear in person at an evidentiary hearing to



1 contest probable cause as to whether the detained person is a
 2 sexually violent predator. At the evidentiary hearing, the court
 3 shall determine whether evidence supports the finding of probable
 4 cause to believe that the person is a sexually violent predator. The
 5 state may:

- 6 (1) exclusively rely upon its petition; or
 7 (2) supplement the petition with additional testimony or
 8 documentary evidence.

9 (c) At the evidentiary hearing held under subsection (b), the
 10 detained person has the following rights in addition to the rights
 11 previously specified:

- 12 (1) To be represented by counsel.
 13 (2) To present evidence on the person's own behalf.
 14 (3) To cross-examine witnesses who testify against the person.
 15 (4) To view and copy all petitions and reports in the court file.

16 (d) If the court finds after the evidentiary hearing held under
 17 subsection (b) that evidence supports a probable cause
 18 determination, the court shall order that the respondent be
 19 transferred to an appropriate secure facility, including a county
 20 jail, for a clinical evaluation as to whether the person is a sexually
 21 violent predator. The evaluation must be conducted by a person
 22 considered by the court to be professionally qualified to conduct
 23 the evaluation.

24 **Sec. 13. (a)** Not more than sixty (60) days after the completion
 25 of an evidentiary hearing held under section 12(b) of this chapter,
 26 the court shall conduct a civil trial to determine whether the person
 27 named as respondent in a petition filed under section 7 of this
 28 chapter is a sexually violent predator.

29 (b) The person named as respondent in the petition is the
 30 defendant in the civil trial of the matter.

31 (c) The civil trial may be continued:

- 32 (1) upon the request of state or the defendant and upon a
 33 showing of good cause; or
 34 (2) by the court on its own motion in the administration of
 35 justice if the defendant is not substantially prejudiced by the
 36 court's action.

37 **Sec. 14.** At all stages of proceedings conducted under this
 38 chapter:

- 39 (1) a respondent or defendant subject to this chapter is
 40 entitled to the assistance of counsel; and
 41 (2) if the respondent or defendant is indigent, the court shall
 42 appoint counsel to assist the person.



1 **Sec. 15. (a) Whenever a respondent or defendant is subjected to**
2 **an examination under this chapter, the person may retain an**
3 **expert or other professional person to perform an examination on**
4 **the person's behalf. If the person wishes to be examined by a**
5 **qualified expert or professional person of the person's own choice,**
6 **the examiner must be permitted to have reasonable access to:**

- 7 **(1) the person for the purpose of the examination; and**
8 **(2) all relevant medical and psychological records and reports**
9 **concerning the person.**

10 **(b) If a respondent or defendant is indigent, the court, upon the**
11 **person's request, shall determine whether the services performed**
12 **under subsection (a) are necessary and whether the requested**
13 **compensation for the services is reasonable. If the court determines**
14 **that the services are necessary and the expert or professional**
15 **person's requested compensation for the services is reasonable, the**
16 **court shall assist the respondent or defendant in obtaining an**
17 **expert or a professional person to perform the examination or**
18 **participate in the trial on the person's behalf. The court shall**
19 **approve payment for the services upon the filing of a certified**
20 **claim for compensation supported by a written statement**
21 **specifying:**

- 22 **(1) the time expended;**
23 **(2) services rendered;**
24 **(3) expenses incurred on behalf of the person; and**
25 **(4) compensation received in the same case or for the same**
26 **services from any other source.**

27 **Sec. 16. A defendant or the attorney general may demand that**
28 **the civil trial conducted under section 13 of this chapter be a trial**
29 **by jury. A demand for jury trial must be filed in writing at least**
30 **four (4) days before trial. The court upon its own motion may**
31 **order a jury trial. If no demand is made and if the court does not**
32 **order a jury trial upon its own motion, the trial must be before the**
33 **court.**

34 **Sec. 17. (a) In a civil trial held under this chapter, the court or**
35 **jury shall determine beyond a reasonable doubt whether the**
36 **defendant is a sexually violent predator. A jury verdict that the**
37 **defendant is a sexually violent predator must be unanimous. The**
38 **verdict may be appealed.**

39 **(b) If the court or jury determines that the defendant is a**
40 **sexually violent predator, the defendant must be committed by the**
41 **court to the custody of the division of mental health for control,**
42 **care, and treatment until the defendant's mental abnormality has**



1 changed to the extent that it is safe to return the defendant to the
 2 community. The control, care, and treatment of the defendant must
 3 be provided at a facility operated by the division of mental health.
 4 A defendant committed to the control, care, and treatment of the
 5 division of mental health under this chapter must be:

- 6 (1) confined in a secure facility; and
 - 7 (2) properly segregated from all other patients;
- 8 under the supervision of the division of mental health.

9 **Sec. 18.** The division of mental health may enter into an
 10 interagency agreement with the department of correction for the
 11 confinement of persons who are adjudicated sexually violent
 12 predators under section 17 of this chapter. A sexually violent
 13 predator who is confined by the department of correction under
 14 the interagency agreement must be housed and managed
 15 separately from offenders in the custody of the department of
 16 correction, and except for occasional instances of supervised
 17 incidental contact, a sexually violent predator must be segregated
 18 from the offenders.

19 **Sec. 19.** If a court or jury is not satisfied beyond a reasonable
 20 doubt that a defendant is a sexually violent predator, the court
 21 shall order the defendant's release. Upon a mistrial, the court shall
 22 order that the defendant be held in a secure facility, including a
 23 county jail, until another trial is conducted. A subsequent trial
 24 following a mistrial must be held not more than ninety (90) days
 25 after the declaration of mistrial in the previous trial, unless the
 26 subsequent trial is continued under section 13 of this chapter.

27 **Sec. 20.** If a person charged with a sexually violent offense has
 28 been found incompetent to stand trial and is about to be released,
 29 and the person's commitment is sought under this chapter, the
 30 court shall first hear evidence and determine whether the person
 31 committed the act charged. A hearing conducted under this section
 32 must comply with all the procedures specified in this chapter. After
 33 hearing the evidence, the court shall make specific findings
 34 regarding the following:

- 35 (1) Whether the person committed the act charged.
- 36 (2) The extent to which the person's incompetence or
 37 developmental disability affects the outcome of the hearing,
 38 including its effect on the person's ability to:
 - 39 (A) consult with and assist counsel; and
 - 40 (B) testify on the person's own behalf.
- 41 (3) The extent to which the evidence could be reconstructed
 42 without the assistance of the person and the strength of the



1 prosecuting attorney's case.

2 If, after the conclusion of a hearing conducted under this section,
3 the court finds beyond a reasonable doubt that the person
4 committed the act charged, the court shall enter a final order,
5 appealable by the person, and may proceed to consider whether the
6 person should be committed under this chapter.

7 Sec. 21. (a) An annual examination of the mental condition of a
8 person committed under this chapter must be conducted. The
9 person may retain, or upon request if the person is indigent, the
10 court may appoint, a qualified professional to examine the person,
11 and the expert or professional person shall have access to all
12 records concerning the person.

13 (b) An annual report regarding the examination conducted
14 under subsection (a) must be provided to the court that committed
15 the person under this chapter. The court shall conduct an annual
16 review of the status of the committed person.

17 Sec. 22. This chapter does not prohibit a committed person from
18 otherwise petitioning the court for discharge. The division of
19 mental health shall provide the committed person with an annual
20 written notice of the person's right to petition the court for release
21 over the division's objection. The notice must contain a waiver of
22 rights. The division shall forward the notice and waiver form to the
23 court with the annual report. The committed person has the right
24 to have an attorney represent the person at a hearing on the
25 petition, but the person is not entitled to be present at the hearing.

26 Sec. 23. If the court at a hearing on a petition filed under section
27 22 of this chapter determines that probable cause exists to believe
28 that the person's mental abnormality has changed to the extent
29 that the person is:

30 (1) safe to be released back into the community; and

31 (2) not likely to engage in acts of sexual violence if discharged;

32 the court shall schedule an evidentiary hearing. At the evidentiary
33 hearing, the committed person is entitled to be present and is
34 entitled to the benefit of all constitutional protections that were
35 afforded the person at the initial commitment proceeding.

36 Sec. 24. The attorney general shall represent the state at an
37 evidentiary hearing scheduled under section 23 of this chapter, and
38 the state has the right to a jury trial and to have the committed
39 person evaluated by experts chosen by the state. The committed
40 person is entitled to have experts evaluate the person on the
41 person's behalf, and the court shall appoint an expert if the person
42 is indigent and requests an appointment. The burden of proof at



1 the hearing is upon the state to prove beyond a reasonable doubt
 2 that the committed person's mental abnormality remains to an
 3 extent that:

4 (1) the person is not safe to be released back into the
 5 community; and

6 (2) if released, the person is likely to engage in acts of sexual
 7 violence.

8 **Sec. 25.** The involuntary detention or commitment of a person
 9 under this chapter must conform to constitutional requirements
 10 for care and treatment.

11 **Sec. 26. (a)** If the director of the division of mental health
 12 determines that a committed person's mental abnormality has
 13 changed to the extent that the person is not likely to commit
 14 predatory acts of sexual violence if released, the director of the
 15 division of mental health shall authorize the committed person to
 16 petition the court for release.

17 (b) A petition filed under subsection (a) must be filed with the
 18 court having jurisdiction and with the attorney general. The court,
 19 upon receipt of the petition for release, shall order a hearing to be
 20 held not more than thirty (30) days after the petition is filed. The
 21 attorney general shall represent the state and is entitled to have the
 22 petitioner examined by an expert or professional person of the
 23 attorney general's choice.

24 **Sec. 27.** A hearing held under section 26 of this chapter must be
 25 before a jury if demanded by either the petitioner or the attorney
 26 general. The burden of proof is upon the attorney general to show
 27 beyond a reasonable doubt that:

28 (1) the petitioner's mental abnormality remains to an extent
 29 that the petitioner is not safe to be released back into the
 30 community; and

31 (2) if discharged, the petitioner is likely to commit predatory
 32 acts of sexual violence.

33 **Sec. 28. (a)** This chapter does not prohibit a person from filing
 34 a petition for discharge from commitment. However, if:

35 (1) a person has previously filed a petition for discharge
 36 without the approval of the director of the division of mental
 37 health; and

38 (2) the court having jurisdiction determined either upon
 39 review of the petition or following a hearing that:

40 (A) the petitioner's petition was frivolous; or

41 (B) the petitioner's condition had not changed to the extent
 42 that the person was safe to be released into the community;



1 the court shall deny the subsequent petition unless the petition
 2 contains facts upon which a court could find the condition of the
 3 petitioner had changed to the extent that a hearing was warranted.

4 (b) Upon receipt of a first or subsequent petition from a
 5 committed person without the director's approval, the court shall:

6 (1) review the petition; and

7 (2) determine if the petition is based upon frivolous grounds,
 8 and if so shall deny the petition without a hearing;

9 whenever possible.

10 Sec. 29. The director of the division of mental health is
 11 responsible for all costs relating to the evaluation and treatment of
 12 persons committed to the division's custody under this chapter.

13 Sec. 30. (a) In addition to any other information required to be
 14 released under this chapter, before the release of a person
 15 committed under this chapter, the director of the division of mental
 16 health shall give written notice of the person's release:

17 (1) to any victim of the person's activities or crime who is
 18 alive and whose address is known to the director; or

19 (2) if a victim of the person's activities or crime is deceased, to
 20 the victim's family, if the family's address is known to the
 21 director.

22 (b) Failure to notify is not a reason for postponement of release.
 23 This section does not create a cause of action against the state or an
 24 employee of the state acting within the scope of the employee's
 25 employment as a result of the failure to notify under this section.

26 Sec. 31. (a) To protect the public, relevant information and
 27 records that are otherwise confidential or privileged must be
 28 released to the agency with jurisdiction or to the attorney general
 29 for the purpose of:

30 (1) meeting the notice requirement under section 7 of this
 31 chapter; and

32 (2) determining whether a person is or continues to be a
 33 sexually violent predator.

34 (b) This section is supplemental to the other provisions of this
 35 chapter.

36 Sec. 32. Any of the following items that have been submitted to
 37 a court or admitted into evidence under this chapter are part of the
 38 record but must be sealed and may be opened only upon order of
 39 the court:

40 (1) Psychological reports.

41 (2) Drug and alcohol reports.

42 (3) Treatment records.



- 1 **(4) Reports of the diagnostic center.**
- 2 **(5) Medical records.**
- 3 **(6) Victim impact statements.**

