

HOUSE BILL No. 1012

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-24-12-10; IC 35-36-2-4; IC 35-39.

Synopsis: Civil commitment of sexual predators. Provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from a correctional institution upon completion of a sentence imposed for conviction of a sexual offense and civil commitment upon release of a person charged with a sexual offense upon a finding of not guilty by reason of insanity. Provides for an annual review and hearing on the person's condition and for release of the person upon a finding that the person's mental abnormality has so changed that the person is not likely to commit predatory acts of sexual violence if released. Requires the commissioner of the department of correction to establish a multidisciplinary review team that includes individuals from other state agencies to assess initially whether a person meets the definition of a sexually violent predator and to notify the attorney general of the
(Continued next page)

Effective: July 1, 1998.

M. Young, Alevizos, Denbo, Frenz

January 6, 1998, read first time and referred to Committee on Courts and Criminal Code.



Digest Continued

multidisciplinary review team's findings. Requires the attorney general to establish a prosecuting attorney review committee to review the records of each person referred to them. Allows the attorney general to file a petition for civil commitment of a person that the attorney general and the prosecuting attorney review committee believe to be a sexually violent predator. Requires a court hearing to determine if there is probable cause to believe that the person is a sexually violent predator and requires a trial to be held not later than 60 days after the probable cause hearing. Provides for the psychological examination of the person by qualified experts and requires the court to appoint experts to examine the person if the person is indigent.



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.

HOUSE BILL No. 1012

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 12-24-12-10, AS AMENDED BY P.L.24-1997,
2 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 10. (a) Upon admission to a state institution
4 administered by the division of mental health, the gatekeeper is one (1)
5 of the following:
6 (1) For an individual with a psychiatric disorder, the community
7 mental health center that submitted the report to the committing
8 court under IC 12-26.
9 (2) For an individual with a developmental disability, a division
10 of disability, aging, and rehabilitative services service coordinator
11 under IC 12-11-2.
12 (3) For an individual entering an addictions program, an
13 addictions treatment provider that is certified by the division of
14 mental health.
15 (b) The division is the gatekeeper for the following:



1 (1) An individual who is found to have insufficient
2 comprehension to stand trial under IC 35-36-3.

3 (2) An individual who is found to be not guilty by reason of
4 insanity under IC 35-36-2-4 and is subject to a civil commitment
5 under IC 12-26 **or IC 35-39.**

6 (3) An individual who is immediately subject to a civil
7 commitment upon:

8 (A) the individual's release from incarceration in a facility
9 administered by the department of correction or the Federal
10 Bureau of Prisons; ~~or upon~~

11 (B) being charged with or convicted of a forcible felony under
12 IC 35-41-1; **or**

13 (C) **a determination under IC 35-39-6 that the individual**
14 **is a sexually violent predator.**

15 (4) An individual placed under the supervision of the division for
16 addictions treatment under IC 12-23-7 and IC 12-23-8.

17 (5) An individual transferred from the department of correction
18 under IC 11-10-4.

19 SECTION 2. IC 35-36-2-4 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) **Except as**
21 **provided in subsection (b),** whenever a defendant is found not
22 responsible by reason of insanity at the time of the crime, the
23 prosecuting attorney shall file a written petition with the court under
24 IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under
25 IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under
26 IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold
27 a commitment hearing under IC 12-26-7. The hearing shall be
28 conducted at the earliest opportunity after the finding of not responsible
29 by reason of insanity at the time of the crime, and the defendant shall
30 be detained in custody until the completion of the hearing. The court
31 may take judicial notice of evidence introduced during the trial of the
32 defendant and may call the physicians appointed by the court to testify
33 concerning whether the defendant is currently mentally ill and
34 dangerous or currently mentally ill and gravely disabled, as those terms
35 are defined by IC 12-7-2-96 and IC 12-7-2-130(a)(1). The court may
36 subpoena any other persons with knowledge concerning the issues
37 presented at the hearing. The defendant has all the rights provided by
38 the provisions of IC 12-26 under which the petition against the
39 defendant was filed. The prosecuting attorney may cross-examine the
40 witnesses and present relevant evidence concerning the issues
41 presented at the hearing.

42 (b) **Whenever a defendant is found not responsible by reason of**



1 insanity at the time of the commission of a sexually violent offense
 2 (as defined in IC 35-39-2-7), the prosecuting attorney shall give
 3 written notice regarding the person to the attorney general as
 4 provided in IC 35-39-3-1. Upon receipt of the notice required by
 5 this subsection, the attorney general shall initiate proceedings
 6 under IC 35-39 for the commitment of the defendant.

7 SECTION 3. IC 35-39 IS ADDED TO THE INDIANA CODE AS
 8 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 9 1998]:

10 **Article 39. Civil Commitment of Sexually Violent Predators**

11 **Chapter 1. Applicability**

12 **Sec. 1. IC 12-26 does not apply to a person who appears to be a**
 13 **sexually violent predator and is the subject of an agency notice**
 14 **under IC 35-39-3-1.**

15 **Chapter 2. Definitions**

16 **Sec. 1. The definitions in this chapter apply throughout this**
 17 **article.**

18 **Sec. 2. "Agency" means an agency having custody of a person**
 19 **-serving a sentence or term of confinement. The term includes the**
 20 **department of correction, the division of mental health, and the**
 21 **parole board.**

22 **Sec. 3. "Mental abnormality" means a congenital or acquired**
 23 **condition affecting a person's emotional or volitional capacity that**
 24 **predisposes the person to commit sexually violent offenses to a**
 25 **degree that makes the person a menace to the health and safety of**
 26 **others.**

27 **Sec. 4. "Multidisciplinary team" refers to the multidisciplinary**
 28 **team established under IC 35-39-3-4.**

29 **Sec. 5. "Predatory" describes acts directed toward strangers or**
 30 **individuals with whom relationships have been established or**
 31 **promoted for the primary purpose of victimization.**

32 **Sec. 6. "Sexually motivated" means that one (1) of the purposes**
 33 **for which a defendant commits a crime is for the purpose of the**
 34 **defendant's sexual gratification.**

35 **Sec. 7. "Sexually violent offense" includes any of the following:**

- 36 (1) Rape (IC 35-42-4-1).
- 37 (2) Criminal deviate conduct (IC 35-42-4-2).
- 38 (3) Child molesting (IC 35-42-4-3).
- 39 (4) Child exploitation (IC 35-42-4-4(b)).
- 40 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 41 (6) Child solicitation (IC 35-42-4-6).
- 42 (7) Child seduction (IC 35-42-4-7).



1 (8) Sexual misconduct with a minor as a Class A or Class B
2 felony (IC 35-42-4-9).

3 (9) Incest (IC 35-46-1-3).

4 (10) Sexual battery (IC 35-42-4-8).

5 (11) Any conviction before July 1, 1998, for a felony in effect
6 that is comparable to an offense listed in subdivision (1)
7 through (10).

8 (12) Any federal or other state conviction for an offense that
9 is substantially equivalent to an offense listed in subdivision
10 (1) through (10).

11 (13) An attempt to commit (as defined in IC 35-41-5-1) or
12 conspiracy to commit (as defined in IC 35-41-5-2) an offense
13 listed in subdivision (1) through (10).

14 (14) Any act that, either at the time of sentencing for an
15 offense or subsequently during civil commitment proceedings
16 under this article, has been determined beyond a reasonable
17 doubt to have been sexually motivated.

18 **Sec. 8. "Sexually violent predator" 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 or personality disorder
22 that makes the person likely to engage in predatory acts of
23 sexual violence if the person is not confined in a secure
24 facility.

25 **Chapter 3. Notice of Release of Sexually Violent Predator**

26 **Sec. 1. Whenever it appears to an agency that a person is a**
27 **sexually violent predator, the agency shall give written notice**
28 **regarding the person to the attorney general and the**
29 **multidisciplinary team not later than ninety (90) days before any**
30 **of the following occurs:**

31 (1) The release date for a person who has been convicted of a
32 sexually violent offense. However, in the case of a person who
33 is returned to a correctional facility for not more than ninety
34 (90) days as a result of revocation of postrelease supervision,
35 written notice shall be given under this subdivision as soon as
36 is practicable following the person's readmission to a
37 correctional facility.

38 (2) The release date for a person who has been:

39 (A) charged with a sexually violent offense; and

40 (B) determined to be incompetent to stand trial under
41 IC 35-36-3.

42 (3) The release date for a person who has been found not



1 guilty by reason of insanity of a sexually violent offense under
2 IC 35-36-2-3(3).

3 (4) The release date for a person who has been found not
4 guilty of a sexually violent offense under IC 35-36-2-3(2).

5 Sec. 2. An agency shall include in the notice required by section
6 1 of this chapter the following:

7 (1) The name of the person who is the subject of the notice,
8 identifying factors, anticipated future residence, and offense
9 history.

10 (2) Documentation of institutional adjustment and treatment
11 received by the person who is the subject of the notice.

12 Sec. 3. An agency, its employees, officials, members of the
13 multidisciplinary team, members of the prosecuting attorney
14 review committee appointed under section 5 of this chapter, and
15 individuals contracting, appointed, or volunteering to perform
16 services under this article are immune from liability for good faith
17 conduct under this article.

18 Sec. 4. (a) The commissioner of the department of correction
19 shall establish a multidisciplinary team that may include
20 individuals from other state agencies to review available records
21 of each person referred to the team under this chapter.

22 (b) The multidisciplinary team, not later than thirty (30) days
23 after receiving notice, shall assess whether or not a person is a
24 sexually violent predator. The multidisciplinary team shall notify
25 the attorney general of the multidisciplinary team's assessment.

26 Sec. 5. (a) The attorney general shall appoint a prosecuting
27 attorney review committee to review the records of each person
28 referred to the attorney general under section 4 of this chapter.

29 (b) The prosecuting attorney review committee shall assist the
30 attorney general in determining whether a person is a sexually
31 violent predator.

32 (c) The assessment of the multidisciplinary team that is made
33 under section 4(b) of this chapter must be made available to the
34 attorney general and the prosecuting attorney review committee.

35 Chapter 4. Determination of Probable Cause; Contents of
36 Petition; Hearing

37 Sec. 1. Whenever it appears that a confined person may be a
38 sexually violent predator and the prosecuting attorney review
39 committee appointed under IC 35-39-3-5 has determined that the
40 person is a sexually violent predator, the attorney general may file
41 a petition with a court having jurisdiction not later than
42 seventy-five (75) days after the date the attorney general receives



1 written notice under IC 35-39-3-1.

2 **Sec. 2. The petition filed under this chapter must:**

- 3 (1) allege that the person named as respondent in the petition
4 is a sexually violent predator; and
5 (2) state sufficient facts to support the allegation.

6 **Sec. 3. (a) Upon the filing of a petition under section 1 of this**
7 **chapter, the court shall determine whether probable cause exists**
8 **to believe that the person named as respondent in the petition is a**
9 **sexually violent predator.**

10 (b) If the court determines under subsection (a) that probable
11 cause exists to believe that the person named as respondent in the
12 petition is a sexually violent predator, the court shall order the
13 agency confining the person named as respondent to retain custody
14 of the person.

15 **Sec. 4. (a) A person detained under section 3 of this chapter**
16 **must be provided with notice of, and an opportunity to appear in**
17 **person at, a hearing to contest probable cause as to whether the**
18 **detained person is a sexually violent predator.**

19 (b) Not later than seventy-two (72) hours after an order is
20 entered under section 3 of this chapter, the court shall conduct the
21 probable cause hearing described in subsection (a).

22 **Sec. 5. At the hearing held under section 4 of this chapter, the**
23 **court shall:**

- 24 (1) verify the detained person's identity; and
25 (2) determine whether probable cause exists to believe that the
26 person is a sexually violent predator.

27 The state may rely upon the petition filed under section 1 of this
28 chapter and may supplement the petition with additional
29 documentary evidence or live testimony.

30 **Sec. 6. At the probable cause hearing held under section 4 of this**
31 **chapter, the detained person has the following rights in addition to**
32 **the rights specified in section 4 of this chapter:**

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

37 **Sec. 7. If a probable cause determination is made by the court**
38 **after a hearing held under section 4 of this chapter, the court shall**
39 **order that the person be transferred to an appropriate secure**
40 **facility, including a county jail, for an evaluation as to whether the**
41 **person is a sexually violent predator. The evaluation must be**
42 **conducted by a person that the court considers professionally**



1 qualified to conduct the examination.

2 Chapter 5. Trial

3 Sec. 1. (a) Not later than sixty (60) days after the completion of
4 a hearing held under IC 35-39-4, the court shall conduct a trial to
5 determine whether the person who was the subject of the hearing
6 is a sexually violent predator.

7 (b) The trial may be continued:

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

10 (2) by the court on its own motion in the due administration
11 of justice;

12 when the person named as defendant in the trial of the matter will
13 not be substantially prejudiced.

14 Sec. 2. At all stages of the proceedings under this article, a
15 person named as defendant in the trial conducted under section 1
16 of this chapter is entitled to the assistance of counsel. If the person
17 is indigent, the court shall appoint counsel to assist the person.

18 Sec. 3. (a) Whenever a person is subjected to an examination
19 under this article, the person may retain experts or professional
20 persons to perform an examination on the person's behalf.

21 (b) Whenever a person wishes to be examined by a qualified
22 expert or professional person of the person's own choice, the
23 examiner shall be permitted to have reasonable access to the
24 person for the purpose of the examination, as well as to all relevant
25 medical and psychological records and reports.

26 (c) For a person who is indigent, the court, upon the person's
27 request, shall determine whether the services are necessary and
28 determine reasonable compensation for the services. If the court
29 determines that the services are necessary and the expert or
30 professional person's requested compensation for the services is
31 reasonable, the court shall assist the person in obtaining an expert
32 or professional person to perform an examination or participate in
33 the trial on the person's behalf.

34 (d) The court shall approve payment for the services upon the
35 filing of a certified claim for compensation supported by a written
36 statement specifying the time expended, services rendered,
37 expenses incurred on behalf of the person, and compensation
38 received in the same case or for the same services from any other
39 source.

40 Sec. 4. The defendant in a trial conducted under section 1 of this
41 chapter, the attorney general, and the court have the right to
42 demand that the trial be before a jury. A demand for jury trial



1 must be filed, in writing, at least four (4) days before trial. The
 2 number and selection of jurors is determined under IC 35-37-1. If
 3 no demand for a jury trial is made, the trial shall be before the
 4 court.

5 **Chapter 6. Commitment Procedure; Interagency agreements;
 6 Mistrials**

7 **Sec. 1. (a) The court or jury in a trial conducted under
 8 IC 35-39-5 shall determine beyond a reasonable doubt if the
 9 defendant at trial is a sexually violent predator. If the
 10 determination that the defendant is a sexually violent predator is
 11 made by a jury, the jury verdict must be unanimous.**

12 **(b) The verdict may be appealed.**

13 **Sec. 2. (a) If the court or jury determines that the defendant is
 14 a sexually violent predator, the defendant shall be committed to the
 15 custody of the division of mental health for control, care, and
 16 treatment until the defendant's mental abnormality or personality
 17 disorder has so changed that the defendant is safe to be at large.**

18 **(b) The control, care, and treatment of a person committed
 19 under subsection (a) must be provided at a facility operated by the
 20 division of mental health.**

21 **Sec. 3. A person committed under section 2 of this chapter for
 22 control, care, and treatment by the division of mental health under
 23 this article must be:**

24 **(1) kept at all times in a secure facility;**

25 **(2) segregated at all times from other patients under the
 26 supervision of the division of mental health; and**

27 **(3) kept in a separate building or facility from any other
 28 building or facility housing patients under the supervision of
 29 the division of mental health who have not been committed
 30 under this article.**

31 **Sec. 4. (a) The division of mental health is authorized to enter
 32 into an interagency agreement with the department of correction
 33 for the confinement of a person found to be a sexually violent
 34 predator under this article.**

35 **(b) A person who is in the custody of the department of
 36 correction under an interagency agreement executed under this
 37 section must be housed and managed separately from offenders in
 38 the custody of the department of correction, and except for
 39 occasional instances of supervised incidental contact, must be
 40 segregated from such offenders.**

41 **Sec. 5. (a) After a trial conducted under IC 35-39-5-1, if a court
 42 or jury is not satisfied beyond a reasonable doubt that the**



1 defendant at trial is a sexually violent predator, the court shall
2 order the person's release.

3 (b) Upon a mistrial of a trial held under IC 35-39-5-1, a court
4 shall order that the defendant be held at an appropriate secure
5 facility, including a county jail, until another trial is conducted.

6 (c) A subsequent trial following a mistrial under this article
7 must be held not later than ninety (90) days after the previous trial,
8 unless the subsequent trial is continued under IC 35-39-5-1.

9 **Sec. 6. (a) If a person:**

10 (1) is charged with a sexually violent offense;

11 (2) has been found incompetent to stand trial;

12 (3) is about to be retained under IC 35-36-3; and

13 (4) is subject to a commitment proceeding under this chapter;
14 the court shall first conduct a hearing to hear evidence and
15 determine whether the person committed the act or acts charged.

16 (b) A hearing held under this section must comply with all the
17 procedures specified in this section. In addition, the rules of
18 evidence applicable in criminal cases apply, and all constitutional
19 rights available to defendants at criminal trials, other than the
20 right not to be tried while incompetent, apply.

21 (c) After hearing evidence at a hearing held under this section,
22 the court shall make written findings on each of the following:

23 (1) Whether the person who is the subject of the hearing
24 committed the act or acts charged.

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

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

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

32 (d) If after the conclusion of a hearing held under this section,
33 the court finds, beyond a reasonable doubt, that the person
34 committed the act or acts charged, the court:

35 (1) shall enter a final order, appealable by the person, on that
36 issue; and

37 (2) may initiate on its own motion, or direct the prosecuting
38 attorney having jurisdiction to initiate, a proceeding for a
39 determination of probable cause under IC 35-39-4.

40 **Sec. 7. Upon a finding of probable cause under IC 35-39-4, the**
41 **matter proceeds to trial as described in IC 35-39-5 and the person**
42 **named as defendant at trial is subject to the requirements and**



1 entitlements of this article.

2 Chapter 7. Annual Examinations and Contested Release
3 Petitions

4 Sec. 1. An examination of the mental condition of each person
5 committed under this article must be made once every year.

6 Sec. 2. A person committed under this article may retain, or if
7 the person is indigent and so requests, the court may appoint, a
8 qualified professional person to examine the person. The expert or
9 professional person is entitled to access to all records concerning
10 the person.

11 Sec. 3. (a) The annual report must be provided to the court that
12 committed the person under this article. The court shall hold a
13 hearing to conduct an annual review of the status of the committed
14 person.

15 (b) This article does not prohibit the person from otherwise
16 petitioning the court for discharge at the annual hearing.

17 Sec. 4. (a) The division of mental health shall provide the
18 committed person with an annual written notice of the person's
19 right to petition the court for release over the division's objection.
20 The notice must contain a waiver of rights. The division shall
21 forward the notice and waiver form to the court with the annual
22 report.

23 (b) The committed person is entitled to have an attorney
24 represent the person at a contested petition hearing, but the person
25 is not entitled to be present at the contested petition hearing.

26 Sec. 5. (a) If the court at a contested petition hearing determines
27 that probable cause exists to believe that the person's mental
28 abnormality or personality disorder has so changed that the person
29 is safe to be at large and will not engage in acts of sexual violence
30 if discharged, the court shall set a release hearing on the issue.

31 (b) At the contested release hearing scheduled under subsection
32 (a), the committed person is entitled to be present and is entitled to
33 the benefit of all constitutional protections that are afforded the
34 person at the person's initial commitment proceeding.

35 Sec. 6. (a) The attorney general shall represent the state at a
36 contested release hearing held under section 5 of this chapter and
37 is entitled to:

- 38 (1) a jury trial of the matter; and
39 (2) have the committed person evaluated by experts chosen by
40 the state.

41 (b) The committed person is also entitled to have experts
42 evaluate the person on the person's behalf. The court shall appoint



1 an expert if the person is indigent and requests such an
2 appointment.

3 **Sec. 7.** The burden of proof at a contested release hearing held
4 under section 5 of this chapter is on the state to prove beyond a
5 reasonable doubt that the committed person's mental abnormality
6 or personality disorder remains such that the person:

7 (1) is not safe to be at large; and

8 (2) if released, is likely to engage in acts of sexual violence.

9 **Chapter 8. Uncontested Petition for Release**

10 **Sec. 1. (a)** For a person committed to the custody of the division
11 of mental health under this article, if the division of mental health
12 determines that the person's mental abnormality or personality
13 disorder has so changed that the person is not likely to commit
14 predatory acts of sexual violence if released, the division of mental
15 health shall authorize the person to submit an uncontested petition
16 to the court for release.

17 (b) The uncontested petition must be served upon the court that
18 heard the initial commitment proceeding under this article and the
19 attorney general.

20 **Sec. 2. (a)** The court, upon receipt of an uncontested petition for
21 release filed under section 1 of this chapter, shall order a hearing
22 to be held not later than thirty (30) days after the date of receipt of
23 the uncontested petition.

24 (b) The attorney general shall represent the state at a hearing
25 held under this section. The attorney general is entitled to have the
26 petitioner examined by an expert or professional person of the
27 attorney general's choice.

28 **Sec. 3. (a)** A hearing on an uncontested petition for release held
29 under this chapter must be held before a jury if demanded by
30 either the uncontested petitioner or the attorney general.

31 (b) The burden of proof is on the attorney general to show
32 beyond a reasonable doubt that the petitioner's mental
33 abnormality or personality disorder remains such that the
34 petitioner is not safe to be at large and that if released is likely to
35 commit predatory acts of sexual violence.

36 **Chapter 9. Subsequent Release Petitions**

37 **Sec. 1.** This article does not prohibit a person from filing an
38 unscheduled petition for release under this article. However, if a
39 person has previously filed a contested petition for release and the
40 court determined, either upon review of the petition or following
41 a hearing:

42 (1) that the petitioner's petition was frivolous; or



1 (2) that the petitioner's condition had not so changed that the
 2 person was safe to be at large;
 3 the court shall deny the subsequent contested petition unless the
 4 petition contains facts upon which a court could find the condition
 5 of the petitioner had so changed that a hearing was warranted.

6 **Sec. 2.** Upon receipt of a first or subsequent contested petition
 7 from a committed person, the court shall endeavor whenever
 8 possible to review the petition to determine if the petition is based
 9 upon frivolous grounds, and, if so, shall deny the petition without
 10 a hearing.

11 **Chapter 10. Costs; Duties; Reimbursement**

12 **Sec. 1.** The division of mental health is responsible for all costs
 13 relating to the evaluation and treatment of persons committed to
 14 the division's custody under this article.

15 **Chapter 11. Notice to Victims of Release of Sexual Predators**

16 **Sec. 1. (a)** In addition to any other information required to be
 17 disclosed under this article, before the release of a defendant
 18 committed under this article, the division of mental health shall
 19 give written notice of the defendant's release to any victim of the
 20 defendant's activities or crime if the victim is alive and the victim's
 21 address is known to the division of mental health.

22 **(b)** If a victim is deceased, notice under this chapter must be
 23 given to the victim's family, if the family's address is known to the
 24 division.

25 **(c)** Failure to notify is not a reason for postponement of release.

26 **Sec. 2.** This section does not create a cause of action as a result
 27 of the failure to notify against the state or an employee of the state
 28 acting within the scope of the employee's employment under this
 29 chapter.

30 **Chapter 12. Special Allegation of Sexually Motivated Defendant**

31 **Sec. 1.** The prosecuting attorney shall file a special allegation of
 32 sexually motivated defendant not later than ten (10) days after
 33 arraignment in every criminal case other than sex offenses under
 34 IC 35-42-4 when sufficient admissible evidence exists that when
 35 considered with the most plausible, reasonably foreseeable defense
 36 that could be raised under the evidence, would justify a finding by
 37 a reasonable and objective trier of fact that the crime was
 38 committed by a person who was sexually motivated to commit the
 39 crime.

40 **Sec. 2. (a)** In a criminal case in which a special allegation is filed
 41 under this chapter, the state must prove beyond a reasonable doubt
 42 that the defendant was sexually motivated to commit the crime.



1 (b) For a prosecution in which a special allegation of sexually
 2 motivated defendant is filed under section 1 of this chapter in
 3 which the defendant is convicted of the offense, the court shall
 4 make a written finding as to whether the defendant was sexually
 5 motivated to commit the crime, or if there is a jury trial, the jury,
 6 if it finds the defendant guilty, shall also determine by special
 7 verdict whether the defendant was sexually motivated to commit
 8 the crime. The finding or verdict must not be applied to sex
 9 offenses under IC 35-42-4.

10 (c) The prosecuting attorney may not withdraw the special
 11 allegation of sexually motivated defendant without approval of the
 12 court through an order of dismissal of the special allegation. The
 13 court may not dismiss a special allegation unless it finds that such
 14 an order is necessary to correct an error in the initial charging
 15 decision or unless there are evidentiary problems that make
 16 proving the special allegation doubtful.

17 **Chapter 13. Confidential or Privileged Information and Records**

18 **Sec. 1.** In order to protect the public, relevant information and
 19 records maintained under this article that are otherwise
 20 confidential or privileged must be released to an agency or to the
 21 attorney general for the purpose of:

- 22 (1) meeting the notice requirement provided in IC 35-39-3;
 23 and
 24 (2) determining whether a person is, or continues to be, a
 25 sexually violent predator.

26 **Chapter 14. Court Records**

27 **Sec. 1.** (a) Psychological reports, drug and alcohol reports,
 28 treatment records, reports of the diagnostic center, medical
 29 records, and victim impact statements that have been submitted to
 30 the court or admitted into evidence under this article shall be part
 31 of the court record.

32 (b) The court record under this section shall be sealed and may
 33 be opened only on order of the court.

34 **Chapter 15. Commitment Rights**

35 **Sec. 1.** The involuntary detention or commitment of a person
 36 under this article must conform to constitutional requirements for
 37 care and treatment.

