

HOUSE BILL No. 1183

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
(Continued next page)

Effective: July 1, 1998.

Kuzman

January 8, 1998, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

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 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 whom 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.

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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.

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HOUSE BILL No. 1183

A BILL FOR AN ACT to amend the Indiana Code concerning civil 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**



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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**
 11 **VIOLENT PREDATORS**

12 **Chapter 1. Applicability**

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

16 **Chapter 2. Definitions**

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

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

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

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

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

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

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

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



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- 1 (7) Child seduction (IC 35-42-4-7).
 2 (8) Sexual misconduct with a minor as a Class A or Class B
 3 felony (IC 35-42-4-9).
 4 (9) Incest (IC 35-46-1-3).
 5 (10) Sexual battery (IC 35-42-4-8).
 6 (11) Any conviction before July 1, 1998, for a felony in effect
 7 that is comparable to an offense listed in subdivision (1)
 8 through (10).
 9 (12) Any federal or other state conviction for an offense that
 10 is substantially equivalent to an offense listed in subdivisions
 11 (1) through (10).
 12 (13) An attempt to commit (as defined in IC 35-41-5-1) or
 13 conspiracy to commit (as defined in IC 35-41-5-2) an offense
 14 listed in subdivisions (1) through (10).
 15 (14) Any act that, either at the time of sentencing for an
 16 offense or subsequently during civil commitment proceedings
 17 under this article, has been determined beyond a reasonable
 18 doubt to have been sexually motivated.
- 19 **Sec. 8. "Sexually violent predator" means a person who:**
 20 (1) has been convicted of or charged with a sexually violent
 21 offense; and
 22 (2) suffers from a mental abnormality or personality disorder
 23 that makes the person likely to engage in predatory acts of
 24 sexual violence if the person is not confined in a secure
 25 facility.
- 26 **Chapter 3. Notice of Release of Sexually Violent Predator**
 27 **Sec. 1. Whenever it appears to an agency that a person is a**
 28 **sexually violent predator, the agency shall give written notice**
 29 **regarding the person to the attorney general and the**
 30 **multidisciplinary team not later than ninety (90) days before any**
 31 **of the following occurs:**
 32 (1) The release date for a person who has been convicted of a
 33 sexually violent offense. However, in the case of a person who
 34 is returned to a correctional facility for not more than ninety
 35 (90) days as a result of revocation of postrelease supervision,
 36 written notice shall be given under this subdivision as soon as
 37 is practicable following the person's readmission to a
 38 correctional facility.
 39 (2) The release date for a person who has been:
 40 (A) charged with a sexually violent offense; and
 41 (B) determined to be incompetent to stand trial under
 42 IC 35-36-3.



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

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

6 **Sec. 2. An agency shall include in the notice required by section**
 7 **1 of this chapter the following:**

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

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

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

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

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

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

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

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

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

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



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1 seventy-five (75) days after the date the attorney general receives
2 written notice under IC 35-39-3-1.

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

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

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

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

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

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

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

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

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

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

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

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

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1 conducted by a person that the court considers professionally
2 qualified to conduct the examination.

3 **Chapter 5. Trial**

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

8 **(b)** The trial may be continued:

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

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

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

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

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

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

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

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

41 **Sec. 4.** The defendant in a trial conducted under section 1 of this
42 chapter, the attorney general, and the court have the right to



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

6 **Chapter 6. Commitment Procedure; Interagency Agreements;
 7 Mistrials**

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

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

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

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

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

- 25 (1) kept at all times in a secure facility;
- 26 (2) segregated at all times from other patients under the
- 27 supervision of the division of mental health; and
- 28 (3) kept in a separate building or facility from any other
- 29 building or facility housing patients under the supervision of
- 30 the division of mental health who have not been committed
- 31 under this article.

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

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

42 **Sec. 5. (a)** After a trial conducted under IC 35-39-5-1, if a court



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1 or jury is not satisfied beyond a reasonable doubt that the
 2 defendant at trial is a sexually violent predator, the court shall
 3 order the person's release.

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

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

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

- 11 (1) is charged with a sexually violent offense;
- 12 (2) has been found incompetent to stand trial;
- 13 (3) is about to be retained under IC 35-36-3; and
- 14 (4) is subject to a commitment proceeding under this chapter;

15 the court shall first conduct a hearing to hear evidence and
 16 determine whether the person committed the act or acts charged.

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

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

- 24 (1) Whether the person who is the subject of the hearing
 25 committed the act or acts charged.
- 26 (2) The extent to which the person's incompetence or
 27 developmental disability affected the outcome of the hearing,
 28 including the effect on the person's ability to consult with and
 29 assist counsel and to testify on the person's own behalf.
- 30 (3) The extent to which the evidence could be reconstructed
 31 without the assistance of the person.
- 32 (4) The strength of the prosecution's case.

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

- 36 (1) shall enter a final order, appealable by the person, on that
 37 issue; and
- 38 (2) may initiate on its own motion, or direct the prosecuting
 39 attorney having jurisdiction to initiate, a proceeding for a
 40 determination of probable cause under IC 35-39-4.

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

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1 named as defendant at trial is subject to the requirements and
2 entitlements of this article.

3 **Chapter 7. Annual Examinations and Contested Release**
4 **Petitions**

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

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

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

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

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

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

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

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

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

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

42 **(b) The committed person is also entitled to have experts**

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1 evaluate the person on the person's behalf. The court shall appoint
 2 an expert if the person is indigent and requests such an
 3 appointment.

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

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

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

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

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

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

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

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

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

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

37 **Chapter 9. Subsequent Release Petitions**

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



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

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

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

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

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

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

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

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

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

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

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

41 **Sec. 2. (a)** In a criminal case in which a special allegation is filed
 42 under this chapter, the state must prove beyond a reasonable doubt

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1 that the defendant was sexually motivated to commit the crime.

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

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

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

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

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

27 **Chapter 14. Court Records**

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

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

35 **Chapter 15. Commitment Rights**

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

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