



Reprinted  
April 9, 1999

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# ENGROSSED SENATE BILL No. 165

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DIGEST OF SB 165 (Updated April 8, 1999 5:28 pm - DI 76)

**Citations Affected:** IC 35-47.

**Synopsis:** Violent felons, firearms, and sexual predators. Makes possession of a firearm by a person who has been convicted of a felony a Class D felony. Provides that a serious violent felon who knowingly or intentionally possesses a firearm commits a Class C felony unless 10 years have elapsed from the date the serious violent felon was discharged from probation, imprisonment, or parole, whichever occurs  
(Continued next page)

**Effective:** July 1, 1999.

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**Alexa, Meeks R, Bowser**  
(HOUSE SPONSORS — VILLALPANDO, AYRES)

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January 6, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.  
February 25, 1999, amended, reported favorably — Do Pass.  
March 1, 1999, read second time, ordered engrossed.  
March 2, 1999, engrossed.  
March 3, 1999, read third time, passed. Yeas 49, nays 0.  
HOUSE ACTION  
March 8, 1999, read first time and referred to Committee on Courts and Criminal Code.  
April 5, 1999, amended, reported — Do Pass.  
April 8, 1999, read second time, amended, ordered engrossed.

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later. Excludes muzzleloading firearms that use blackpowder from the types of firearms applicable to the above-mentioned offenses. 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 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.

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April 9, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## ENGROSSED SENATE BILL No. 165

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 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) Upon admission  
3 to a state institution administered by the division of mental health, the  
4 gatekeeper is one (1) of the following:  
5 (1) For an individual with a psychiatric disorder, the community  
6 mental health center that submitted the report to the committing  
7 court under IC 12-26.  
8 (2) For an individual with a developmental disability, a division  
9 of disability, aging, and rehabilitative services service coordinator  
10 under IC 12-11-2.  
11 (3) For an individual entering an addictions program, an  
12 addictions treatment provider that is certified by the division of  
13 mental health.  
14 (b) The division is the gatekeeper for the following:  
15 (1) An individual who is found to have insufficient  
16 comprehension to stand trial under IC 35-36-3.

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

4 (3) An individual who is immediately subject to a civil  
 5 commitment upon:

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

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

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

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

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

17 SECTION 2. IC 34-30-2-148.3 IS ADDED TO THE INDIANA  
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 1999]: **Sec. 148.3. IC 35-39-3-3 (Concerning**  
 20 **persons who provide services under IC 35-39 governing the civil**  
 21 **commitment of sexually violent predators).**

22 SECTION 3. IC 35-36-2-4 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) **Except as**  
 24 **provided in subsection (b),** whenever a defendant is found not  
 25 responsible by reason of insanity at the time of the crime, the  
 26 prosecuting attorney shall file a written petition with the court under  
 27 IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under  
 28 IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under  
 29 IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold  
 30 a commitment hearing under IC 12-26-7. The hearing shall be  
 31 conducted at the earliest opportunity after the finding of not responsible  
 32 by reason of insanity at the time of the crime, and the defendant shall  
 33 be detained in custody until the completion of the hearing. The court  
 34 may take judicial notice of evidence introduced during the trial of the  
 35 defendant and may call the physicians appointed by the court to testify  
 36 concerning whether the defendant is currently mentally ill and  
 37 dangerous or currently mentally ill and gravely disabled, as those terms  
 38 are defined by IC 12-7-2-96 and IC 12-7-2-130(a)(1). The court may  
 39 subpoena any other persons with knowledge concerning the issues  
 40 presented at the hearing. The defendant has all the rights provided by  
 41 the provisions of IC 12-26 under which the petition against the  
 42 defendant was filed. The prosecuting attorney may cross-examine the



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1 witnesses and present relevant evidence concerning the issues  
2 presented at the hearing.

3 **(b) Whenever a defendant is found not responsible by reason of**  
4 **insanity at the time of the commission of a sexually violent offense**  
5 **(as defined in IC 35-39-2-7), the prosecuting attorney shall give**  
6 **written notice regarding the person to the attorney general as**  
7 **provided in IC 35-39-3-1. Upon receipt of the notice required by**  
8 **this subsection, the attorney general shall initiate proceedings**  
9 **under IC 35-39 for the commitment of the defendant.**

10 SECTION 4. IC 35-39 IS ADDED TO THE INDIANA CODE AS  
11 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
12 1999]:

13 **Article 39. CIVIL COMMITMENT OF SEXUALLY VIOLENT**  
14 **PREDATORS**

15 **Chapter 1. Applicability**

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

19 **Chapter 2. Definitions**

20 **Sec. 1. The definitions in this chapter apply throughout this**  
21 **article.**

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

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

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

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

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

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

- 40 (1) Rape (IC 35-42-4-1).  
41 (2) Criminal deviate conduct (IC 35-42-4-2).  
42 (3) Child molesting (IC 35-42-4-3).



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



1 (A) charged with a sexually violent offense; and  
 2 (B) determined to be incompetent to stand trial under  
 3 IC 35-36-3.

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

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

9 Sec. 2. An agency shall include in the notice required by section  
 10 1 of this chapter the following:

11 (1) The name of the person who is the subject of the notice,  
 12 identifying factors, anticipated future residence, and offense  
 13 history.

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

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

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

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

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

33 (b) The prosecuting attorney review committee shall assist the  
 34 attorney general in determining whether a person is a sexually  
 35 violent predator.

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

39 Chapter 4. Determination of Probable Cause; Contents of  
 40 Petition; Hearing

41 Sec. 1. Whenever it appears that a confined person may be a  
 42 sexually violent predator and the prosecuting attorney review

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1 committee appointed under IC 35-39-3-5 has determined that the  
 2 person is a sexually violent predator, the attorney general may file  
 3 a petition with a court having jurisdiction not later than  
 4 seventy-five (75) days after the date the attorney general receives  
 5 written notice under IC 35-39-3-1.

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

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

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

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

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

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

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

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

31 **The state may rely upon the petition filed under section 1 of this**  
 32 **chapter and may supplement the petition with additional**  
 33 **documentary evidence or live testimony.**

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

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

41 **Sec. 7. If a probable cause determination is made by the court**  
 42 **after a hearing held under section 4 of this chapter, the court shall**

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1 order that the person be transferred to an appropriate secure  
2 facility, including a county jail, for an evaluation as to whether the  
3 person is a sexually violent predator. The evaluation must be  
4 conducted by a person that the court considers professionally  
5 qualified to conduct the examination.

6 **Chapter 5. Trial**

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

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

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

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

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

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

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

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

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

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



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1 source.

2 **Sec. 4.** The defendant in a trial conducted under section 1 of this  
3 chapter, the attorney general, and the court have the right to  
4 demand that the trial be before a jury. A demand for jury trial  
5 must be filed, in writing, at least four (4) days before trial. The  
6 number and selection of jurors is determined under IC 35-37-1. If  
7 no demand for a jury trial is made, the trial shall be before the  
8 court.

9 **Chapter 6. Commitment Procedure; Interagency agreements;**  
10 **Mistrials**

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

16 (b) The verdict may be appealed.

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

22 (b) The control, care, and treatment of a person committed  
23 under subsection (a) must be provided at a facility operated by the  
24 division of mental health.

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

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

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

39 (b) A person who is in the custody of the department of  
40 correction under an interagency agreement executed under this  
41 section must be housed and managed separately from offenders in  
42 the custody of the department of correction, and except for



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1 occasional instances of supervised incidental contact, must be  
2 segregated from such offenders.

3 Sec. 5. (a) After a trial conducted under IC 35-39-5-1, if a court  
4 or jury is not satisfied beyond a reasonable doubt that the  
5 defendant at trial is a sexually violent predator, the court shall  
6 order the person's release.

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

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

13 Sec. 6. (a) If a person:

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

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

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

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

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

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

- 39 (1) shall enter a final order, appealable by the person, on that  
40 issue; and
- 41 (2) may initiate on its own motion, or direct the prosecuting  
42 attorney having jurisdiction to initiate, a proceeding for a

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

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

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

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

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

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

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

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

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

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

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

- (1) a jury trial of the matter; and



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(2) have the committed person evaluated by experts chosen by the state.

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

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

- (1) is not safe to be at large; and
- (2) if released, is likely to engage in acts of sexual violence.

**Chapter 8. Uncontested Petition for Release**

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

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

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

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

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

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

**Chapter 9. Subsequent Release Petitions**

Sec. 1. This article does not prohibit a person from filing an unscheduled petition for release under this article. However, if a

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1 person has previously filed a contested petition for release and the  
 2 court determined, either upon review of the petition or following  
 3 a hearing:

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

5 (2) that the petitioner's condition had not so changed that the  
 6 person was safe to be at large;

7 the court shall deny the subsequent contested petition unless the  
 8 petition contains facts upon which a court could find the condition  
 9 of the petitioner had so changed that a hearing was warranted.

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

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

16 Sec. 1. The division of mental health is responsible for all costs  
 17 relating to the evaluation and treatment of persons committed to  
 18 the division's custody under this article.

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

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

26 (b) If a victim is deceased, notice under this chapter must be  
 27 given to the victim's family, if the family's address is known to the  
 28 division.

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

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

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

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



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crime.

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

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

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

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

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

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

**Chapter 14. Court Records**

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

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

**Chapter 15. Commitment Rights**

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

**SECTION 5. IC 35-47-4-4 IS AMENDED TO READ AS**



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1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) This section does  
2 not apply to a person who owns, carries, or possesses a firearm:

- 3 (1) in the person's dwelling;  
4 (2) on the person's property; or  
5 (3) in the person's fixed place of business.

6 (b) A person who:

- 7 (1) has been convicted of a felony; and  
8 (2) ~~owns, carries, or possesses a firearm not designed to use fixed~~  
9 ~~cartridges or fixed ammunition, or a firearm made before January~~  
10 ~~1, 1899; knowingly or intentionally possesses a firearm;~~

11 commits **unlawful possession of a firearm**, a Class D felony.

12 (c) For purposes of this section, "firearm" **does not include a**  
13 **muzzleloading firearm that uses blackpowder.**

14 SECTION 6. IC 35-47-4-5 IS ADDED TO THE INDIANA CODE  
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 1999]: Sec. 5. (a) As used in this section, "serious violent felon"  
17 means a person who has been convicted of:

18 (1) committing a serious violent felony in:

19 (A) Indiana; or

20 (B) any other jurisdiction in which the elements of the  
21 crime for which the conviction was entered are  
22 substantially similar to the elements of a serious violent  
23 felony; or

24 (2) attempting to commit or conspiring to commit a serious  
25 violent felony in:

26 (A) Indiana as provided under IC 35-41-5-1 or  
27 IC 35-45-5-2; or

28 (B) any other jurisdiction in which the elements of the  
29 crime for which the conviction was entered are  
30 substantially similar to the elements of attempting to  
31 commit or conspiring to commit a serious violent felony.

32 (b) As used in this section, "serious violent felony" means:

- 33 (1) murder (IC 35-42-1-1);  
34 (2) voluntary manslaughter (IC 35-42-1-3);  
35 (3) battery as a Class B felony (IC 35-42-2-1(a)(4));  
36 (4) aggravated battery (IC 35-42-2-1.5);  
37 (5) kidnapping (IC 35-42-3-2);  
38 (6) criminal confinement as a Class B felony (IC 35-42-3-3);  
39 (7) rape (IC 35-42-4-1);  
40 (8) criminal deviate conduct (IC 35-42-4-2);  
41 (9) child molesting as a Class A felony or Class B felony (IC  
42 35-42-4-3);



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- 1           **(10) robbery as a Class A felony or Class B felony (IC**
- 2           **35-42-5-1);**
- 3           **(11) carjacking (IC 35-42-5-2);**
- 4           **(12) arson as a Class A felony or Class B felony**
- 5           **(IC 35-43-1-1(a));**
- 6           **(13) burglary as a Class A felony or Class B felony**
- 7           **(IC 35-43-2-1);**
- 8           **(14) resisting law enforcement as a Class B felony (IC**
- 9           **35-44-3-3);**
- 10           **(15) stalking as a Class B felony (IC 35-45-10-5);**
- 11           **(16) incest as a Class B felony (IC 35-46-1-3);**
- 12           **(17) dealing in cocaine or a narcotic drug (IC 35-48-4-1);**
- 13           **(18) dealing in a schedule I, II, or III controlled substance**
- 14           **(IC 35-48-4-2);**
- 15           **(19) dealing in a schedule IV controlled substance as a Class**
- 16           **B felony (IC 35-48-4-3); or**
- 17           **(20) dealing in a schedule V controlled substance as a Class B**
- 18           **felony (IC 35-48-4-4).**
- 19           **(c) A serious violent felon who knowingly or intentionally**
- 20           **possesses a firearm commits unlawful possession of a firearm by a**
- 21           **serious violent felon, a Class C felony unless ten (10) years have**
- 22           **elapsed from the date the serious violent felon was discharged from**
- 23           **probation, imprisonment, or parole, whichever occurs later.**
- 24           **(d) For purposes of this section, "firearm" does not include a**
- 25           **muzzleloading firearm that uses blackpowder.**

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SENATE MOTION

Mr. President: I move that Senator Meeks R be added as second author of Senate Bill 165.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 165, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, after "homicide" insert "**not committed by means of a vehicle**".

and when so amended that said bill do pass.

(Reference is to SB 165 as introduced.)

MEEKS R, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Bowser be added as coauthor of Senate Bill 165.

ALEXA

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 165, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 165 as printed February 26, 1999.)

DVORAK, Chair

Committee Vote: yeas 13, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 165 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert

"SECTION 1. IC 12-24-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) Upon admission to a state institution administered by the division of mental health, the gatekeeper is one (1) of the following:

(1) For an individual with a psychiatric disorder, the community mental health center that submitted the report to the committing court under IC 12-26.

(2) For an individual with a developmental disability, a division of disability, aging, and rehabilitative services service coordinator under IC 12-11-2.

(3) For an individual entering an addictions program, an addictions treatment provider that is certified by the division of mental health.

(b) The division is the gatekeeper for the following:

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

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

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

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

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

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

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

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

SECTION 2. IC 34-30-2-148.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 148.3. IC 35-39-3-3 (Concerning persons who provide services under IC 35-39 governing the civil commitment of sexually violent predators).**

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SECTION 3. IC 35-36-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) **Except as provided in subsection (b)**, whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7. The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and IC 12-7-2-130(a)(1). The court may subpoena any other persons with knowledge concerning the issues presented at the hearing. The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(b) **Whenever a defendant is found not responsible by reason of insanity at the time of the commission of a sexually violent offense (as defined in IC 35-39-2-7), the prosecuting attorney shall give written notice regarding the person to the attorney general as provided in IC 35-39-3-1. Upon receipt of the notice required by this subsection, the attorney general shall initiate proceedings under IC 35-39 for the commitment of the defendant.**

SECTION 4. IC 35-39 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

**Article 39. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS**

**Chapter 1. Applicability**

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

**Chapter 2. Definitions**

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



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

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

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

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

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

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

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9).
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Any conviction before July 1, 1998, for a felony in effect that is comparable to an offense listed in subdivisions (1) through (10).
- (12) Any federal or other state conviction for an offense that is substantially equivalent to an offense listed in subdivisions (1) through (10).
- (13) An attempt to commit (as defined in IC 35-41-5-1) or conspiracy to commit (as defined in IC 35-41-5-2) an offense listed in subdivisions (1) through (10).
- (14) Any act that, either at the time of sentencing for an offense or subsequently during civil commitment proceedings under this article, has been determined beyond a reasonable doubt to have been sexually motivated.



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**Sec. 8. "Sexually violent predator" means a person who:**

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

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

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

- (1) The release date for a person who has been convicted of a sexually violent offense. However, in the case of a person who is returned to a correctional facility for not more than ninety (90) days as a result of revocation of postrelease supervision, written notice shall be given under this subdivision as soon as is practicable following the person's readmission to a correctional facility.**
- (2) The release date for a person who has been:**
  - (A) charged with a sexually violent offense; and**
  - (B) determined to be incompetent to stand trial under IC 35-36-3.**
- (3) The release date for a person who has been found not guilty by reason of insanity of a sexually violent offense under IC 35-36-2-3(3).**
- (4) The release date for a person who has been found not guilty of a sexually violent offense under IC 35-36-2-3(2).**

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

- (1) The name of the person who is the subject of the notice, identifying factors, anticipated future residence, and offense history.**
- (2) Documentation of institutional adjustment and treatment received by the person who is the subject of the notice.**

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



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

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

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

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

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

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

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

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

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

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

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

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

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**detained person is a sexually violent predator.**

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

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

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

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

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

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

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

#### **Chapter 5. Trial**

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

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

- (1) upon the request of either party and a showing of good cause; or**
- (2) by the court on its own motion in the due administration of justice;**

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

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



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

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

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

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

**Sec. 4.** The defendant in a trial conducted under section 1 of this chapter, the attorney general, and the court have the right to demand that the trial be before a jury. A demand for jury trial must be filed, in writing, at least four (4) days before trial. The number and selection of jurors is determined under IC 35-37-1. If no demand for a jury trial is made, the trial shall be before the court.

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

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

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

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



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

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

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

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

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

**Sec. 5. (a)** After a trial conducted under IC 35-39-5-1, if a court or jury is not satisfied beyond a reasonable doubt that the defendant at trial is a sexually violent predator, the court shall order the person's release.

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

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

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

- (1) is charged with a sexually violent offense;
  - (2) has been found incompetent to stand trial;
  - (3) is about to be retained under IC 35-36-3; and
  - (4) is subject to a commitment proceeding under this chapter;
- the court shall first conduct a hearing to hear evidence and determine whether the person committed the act or acts charged.

(b) A hearing held under this section must comply with all the procedures specified in this section. In addition, the rules of



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evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

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

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

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

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

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

#### Chapter 7. Annual Examinations and Contested Release Petitions

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

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

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

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

Sec. 4. (a) The division of mental health shall provide the



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committed person with an annual written notice of the person's right to petition the court for release over the division's objection. The notice must contain a waiver of rights. The division shall forward the notice and waiver form to the court with the annual report.

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

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

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

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

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

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

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

- (1) is not safe to be at large; and
- (2) if released, is likely to engage in acts of sexual violence.

#### Chapter 8. Uncontested Petition for Release

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

(b) The uncontested petition must be served upon the court that

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heard the initial commitment proceeding under this article and the attorney general.

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

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

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

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

#### **Chapter 9. Subsequent Release Petitions**

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

- (1) that the petitioner's petition was frivolous; or
- (2) that the petitioner's condition had not so changed that the person was safe to be at large;

the court shall deny the subsequent contested petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted.

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

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

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

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

**Sec. 1. (a)** In addition to any other information required to be disclosed under this article, before the release of a defendant

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committed under this article, the division of mental health shall give written notice of the defendant's release to any victim of the defendant's activities or crime if the victim is alive and the victim's address is known to the division of mental health.

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

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

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

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

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

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

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

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

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



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

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

**Chapter 14. Court Records**

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

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

**Chapter 15. Commitment Rights**

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

Renumber all SECTIONS consecutively.

(Reference is to ESB 165 as printed April 6, 1999.)

YOUNG M

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 165 be amended to read as follows:

Page 1, between lines 12 and 13, begin a new paragraph and insert:  
**"(c) For purposes of this section, "firearm" does not include a muzzleloading firearm that uses blackpowder."**

Page 3, after line 6, begin a new paragraph and insert:  
**"(d) For purposes of this section, "firearm" does not include a muzzleloading firearm that uses blackpowder."**

(Reference is to ESB 165 as printed April 6, 1999.)

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