

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1963 be amended to read as follows:

- 1 Page 3, between lines 6 and 7, begin a new paragraph and insert:
- 2 "SECTION 2. IC 12-24-12-10 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) Upon admission
- 4 to a state institution administered by the division of mental health, the
- 5 gatekeeper is one (1) 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:
- 16 (1) An individual who is found to have insufficient
- 17 comprehension to stand trial under IC 35-36-3.
- 18 (2) An individual who is found to be not guilty by reason of
- 19 insanity under IC 35-36-2-4 and is subject to a civil commitment
- 20 under IC 12-26 or IC 35-39.
- 21 (3) An individual who is immediately subject to a civil
- 22 commitment upon:
- 23 (A) the individual's release from incarceration in a facility
- 24 administered by the department of correction or the Federal

- 1 Bureau of Prisons; ~~or upon~~
 2 **(B)** being charged with or convicted of a forcible felony under
 3 IC 35-41-1; **or**
 4 **(C) a determination under IC 35-39-6 that the individual**
 5 **is a sexually violent predator.**
 6 (4) An individual placed under the supervision of the division for
 7 addictions treatment under IC 12-23-7 and IC 12-23-8.
 8 (5) An individual transferred from the department of correction
 9 under IC 11-10-4.

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

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

40 SECTION 4. IC 35-39 IS ADDED TO THE INDIANA CODE AS
 41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 42 1999]:

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

44 **Chapter 1. Applicability**

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

1 under IC 35-39-3-1.

2 **Chapter 2. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

14 (1) The release date for a person who has been convicted of a
15 sexually violent offense. However, in the case of a person who
16 is returned to a correctional facility for not more than ninety
17 (90) days as a result of revocation of postrelease supervision,
18 written notice shall be given under this subdivision as soon as
19 is practicable following the person's readmission to a
20 correctional facility.

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

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

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

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

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

30 **Sec. 2. An agency shall include in the notice required by section**
31 **1 of this chapter the following:**

32 (1) The name of the person who is the subject of the notice,
33 identifying factors, anticipated future residence, and offense
34 history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 45 (1) verify the detained person's identity; and
46 (2) determine whether probable cause exists to believe that the

1 person is a sexually violent predator.
 2 The state may rely upon the petition filed under section 1 of this
 3 chapter and may supplement the petition with additional
 4 documentary evidence or live testimony.

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

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

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

19 **Chapter 5. Trial**

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

- 24 (b) The trial may be continued:
 25 (1) upon the request of either party and a showing of good
 26 cause; or
 27 (2) by the court on its own motion in the due administration
 28 of justice;

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

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

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

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

43 (c) For a person who is indigent, the court, upon the person's
 44 request, shall determine whether the services are necessary and
 45 determine reasonable compensation for the services. If the court
 46 determines that the services are necessary and the expert or

1 professional person's requested compensation for the services is
 2 reasonable, the court shall assist the person in obtaining an expert
 3 or professional person to perform an examination or participate in
 4 the trial on the person's behalf.

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

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

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

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

25 (b) The verdict may be appealed.

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

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

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

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

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

1 predator under this article.

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

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

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

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

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

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

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

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

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

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

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

- 44 (1) shall enter a final order, appealable by the person, on that
45 issue; and
- 46 (2) may initiate on its own motion, or direct the prosecuting

1 attorney having jurisdiction to initiate, a proceeding for a
 2 determination of probable cause under IC 35-39-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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:**

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

46 the court shall deny the subsequent contested petition unless the

1 petition contains facts upon which a court could find the condition
2 of the petitioner had so changed that a hearing was warranted.

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

8 Chapter 10. Costs; Duties; Reimbursement

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

12 Chapter 11. Notice to Victims of Release of Sexual Predators

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

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

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

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

27 Chapter 12. Special Allegation of Sexually Motivated Defendant

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

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

40 (b) For a prosecution in which a special allegation of sexually
41 motivated defendant is filed under section 1 of this chapter in
42 which the defendant is convicted of the offense, the court shall
43 make a written finding as to whether the defendant was sexually
44 motivated to commit the crime, or if there is a jury trial, the jury,
45 if it finds the defendant guilty, shall also determine by special
46 verdict whether the defendant was sexually motivated to commit

1 the crime. The finding or verdict must not be applied to sex
2 offenses under IC 35-42-4.

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

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

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

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

19 **Chapter 14. Court Records**

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

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

27 **Chapter 15. Commitment Rights**

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

31 Renumber all SECTIONS consecutively.
(Reference is to HB 1963 as printed March 2, 1999.)

Representative Young M