

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

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

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert
- 3 "SECTION 1. IC 12-24-12-10 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) Upon admission
- 5 to a state institution administered by the division of mental health, the
- 6 gatekeeper is one (1) of the following:
- 7 (1) For an individual with a psychiatric disorder, the community
- 8 mental health center that submitted the report to the committing
- 9 court under IC 12-26.
- 10 (2) For an individual with a developmental disability, a division
- 11 of disability, aging, and rehabilitative services service coordinator
- 12 under IC 12-11-2.
- 13 (3) For an individual entering an addictions program, an
- 14 addictions treatment provider that is certified by the division of
- 15 mental health.
- 16 (b) The division is the gatekeeper for the following:
- 17 (1) An individual who is found to have insufficient
- 18 comprehension to stand trial under IC 35-36-3.
- 19 (2) An individual who is found to be not guilty by reason of
- 20 insanity under IC 35-36-2-4 and is subject to a civil commitment
- 21 under IC 12-26 **or IC 35-39.**
- 22 (3) An individual who is immediately subject to a civil
- 23 commitment upon:

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

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

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

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

1 SECTION 4. IC 35-39 IS ADDED TO THE INDIANA CODE AS
 2 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 3 1999]:

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

6 **Chapter 1. Applicability**

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

10 **Chapter 2. Definitions**

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

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

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

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

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

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

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

- 31 (1) Rape (IC 35-42-4-1).
- 32 (2) Criminal deviate conduct (IC 35-42-4-2).
- 33 (3) Child molesting (IC 35-42-4-3).
- 34 (4) Child exploitation (IC 35-42-4-4(b)).
- 35 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 36 (6) Child solicitation (IC 35-42-4-6).
- 37 (7) Child seduction (IC 35-42-4-7).
- 38 (8) Sexual misconduct with a minor as a Class A or Class B
- 39 **felony (IC 35-42-4-9).**
- 40 (9) Incest (IC 35-46-1-3).
- 41 (10) Sexual battery (IC 35-42-4-8).
- 42 (11) Any conviction before July 1, 1998, for a felony in effect
- 43 **that is comparable to an offense listed in subdivisions (1)**
- 44 **through (10).**
- 45 (12) Any federal or other state conviction for an offense that
- 46 **is substantially equivalent to an offense listed in subdivisions**

- 1 (1) through (10).
- 2 (13) An attempt to commit (as defined in IC 35-41-5-1) or
- 3 conspiracy to commit (as defined in IC 35-41-5-2) an offense
- 4 listed in subdivisions (1) through (10).
- 5 (14) Any act that, either at the time of sentencing for an
- 6 offense or subsequently during civil commitment proceedings
- 7 under this article, has been determined beyond a reasonable
- 8 doubt to have been sexually motivated.

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

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

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

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

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

38 **Sec. 2. An agency shall include in the notice required by section**
39 **1 of this chapter the following:**

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

45 **Sec 3. An agency, its employees, officials, members of the**
46 **multidisciplinary team, members of the prosecuting attorney**

1 review committee appointed under section 5 of this chapter, and
 2 individuals contracting, appointed, or volunteering to perform
 3 services under this article are immune from liability for good faith
 4 conduct under this article.

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

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

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

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

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

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

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

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

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

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

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

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

1 detained person is a sexually violent predator.

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

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

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

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

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

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

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

27 **Chapter 5. Trial**

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

- 32 (b) The trial may be continued:
33 (1) upon the request of either party and a showing of good
34 cause; or
35 (2) by the court on its own motion in the due administration
36 of justice;

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

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

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

46 (b) Whenever a person wishes to be examined by a qualified

1 expert or professional person of the person's own choice, the
2 examiner shall be permitted to have reasonable access to the
3 person for the purpose of the examination, as well as to all relevant
4 medical and psychological records and reports.

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

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

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

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

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

33 (b) The verdict may be appealed.

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

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

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

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

46 (2) segregated at all times from other patients under the

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

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

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

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

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

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

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

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

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

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

- 40 (1) Whether the person who is the subject of the hearing
 41 committed the act or acts charged.
- 42 (2) The extent to which the person's incompetence or
 43 developmental disability affected the outcome of the hearing,
 44 including the effect on the person's ability to consult with and
 45 assist counsel and to testify on the person's own behalf.
- 46 (3) The extent to which the evidence could be reconstructed

1 without the assistance of the person.

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

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

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

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

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

15 Chapter 7. Annual Examinations and Contested Release
16 Petitions

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

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

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

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

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

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

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

44 (b) At the contested release hearing scheduled under subsection
45 (a), the committed person is entitled to be present and is entitled to
46 the benefit of all constitutional protections that are afforded the

1 person at the person's initial commitment proceeding.
2 Sec. 6. (a) The attorney general shall represent the state at a
3 contested release hearing held under section 5 of this chapter and
4 is entitled to:
5 (1) a jury trial of the matter; and
6 (2) have the committed person evaluated by experts chosen by
7 the state.
8 (b) The committed person is also entitled to have experts
9 evaluate the person on the person's behalf. The court shall appoint
10 an expert if the person is indigent and requests such an
11 appointment.
12 Sec. 7. The burden of proof at a contested release hearing held
13 under section 5 of this chapter is on the state to prove beyond a
14 reasonable doubt that the committed person's mental abnormality
15 or personality disorder remains such that the person:
16 (1) is not safe to be at large; and
17 (2) if released, is likely to engage in acts of sexual violence.
18 **Chapter 8. Uncontested Petition for Release**
19 Sec. 1. (a) For a person committed to the custody of the division
20 of mental health under this article, if the division of mental health
21 determines that the person's mental abnormality or personality
22 disorder has so changed that the person is not likely to commit
23 predatory acts of sexual violence if released, the division of mental
24 health shall authorize the person to submit an uncontested petition
25 to the court for release.
26 (b) The uncontested petition must be served upon the court that
27 heard the initial commitment proceeding under this article and the
28 attorney general.
29 Sec. 2. (a) The court, upon receipt of an uncontested petition for
30 release filed under section 1 of this chapter, shall order a hearing
31 to be held not later than thirty (30) days after the date of receipt of
32 the uncontested petition.
33 (b) The attorney general shall represent the state at a hearing
34 held under this section. The attorney general is entitled to have the
35 petitioner examined by an expert or professional person of the
36 attorney general's choice.
37 Sec. 3. (a) A hearing on an uncontested petition for release held
38 under this chapter must be held before a jury if demanded by
39 either the uncontested petitioner or the attorney general.
40 (b) The burden of proof is on the attorney general to show
41 beyond a reasonable doubt that the petitioner's mental
42 abnormality or personality disorder remains such that the
43 petitioner is not safe to be at large and that if released is likely to
44 commit predatory acts of sexual violence.
45 **Chapter 9. Subsequent Release Petitions**
46 Sec. 1. This article does not prohibit a person from filing an

1 **unscheduled petition for release under this article. However, if a**
2 **person has previously filed a contested petition for release and the**
3 **court determined, either upon review of the petition or following**
4 **a hearing:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **Chapter 13. Confidential or Privileged Information and Records**
19 **Sec. 1. In order to protect the public, relevant information and**
20 **records maintained under this article that are otherwise**
21 **confidential or privileged must be released to an agency or to the**
22 **attorney general for the purpose of:**

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

27 **Chapter 14. Court Records**
28 **Sec. 1. (a) Psychological reports, drug and alcohol reports,**
29 **treatment records, reports of the diagnostic center, medical**
30 **records, and victim impact statements that have been submitted to**
31 **the court or admitted into evidence under this article shall be part**
32 **of the court record.**

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

35 **Chapter 15. Commitment Rights**
36 **Sec. 1. The involuntary detention or commitment of a person**
37 **under this article must conform to constitutional requirements for**

- 1 **care and treatment."**
- 2 Renumber all SECTIONS consecutively.
(Reference is to ESB 165 as printed April 6, 1999.)

Representative Young M