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# HOUSE BILL No. 1714

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-26-17.

**Synopsis:** Commitment of sexually violent predators. Provides for the civil commitment for an indeterminate period of a person who is found to be a sexually violent predator. Specifies that the purpose of the civil commitment is to provide treatment for a person with a serious mental disorder and then return the person to the community. Applies to a person who: (1) has been charged with or convicted of a Class A or Class B felony sex offense; and (2) suffers from a mental abnormality that makes the person likely to engage in predatory acts of sexual violence if the person is not confined in a secure facility. Provides that before a person who may be a sexually violent predator may be released from confinement, the releasing authority shall inform a three  
(Continued next page)

**Effective:** July 1, 1999.

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**Kuzman**

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

member review committee consisting of two psychiatrists or psychologists and one prosecuting attorney or deputy prosecuting attorney with experience prosecuting sex offense cases that the person may be a sexually violent predator. Establishes procedures for a determination of probable cause, a hearing, and other procedural safeguards. Provides that if a person is determined by a court to be a sexually violent predator, the person must be committed to a state institution. Provides procedures for the evaluation and review of a person who is committed. Provides that the person is to be committed for the period that the person's mental abnormality exists to the extent that: (1) the person is not safe to be released back into the community; and (2) if released, the person is likely to engage in acts of sexual violence.

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Introduced

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.

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## HOUSE BILL No. 1714

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A BILL FOR AN ACT to amend the Indiana Code concerning human services.

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

1 SECTION 1. IC 12-26-17 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1999]:

4 **Chapter 17. Commitment of Sexually Violent Predators**

5 **Sec. 1. As used in this chapter, "agency" means an agency that**  
6 **releases upon lawful order or authority a person serving a sentence**  
7 **or term of confinement. The term includes:**

- 8 (1) the department of correction; and  
9 (2) the division of mental health.

10 **Sec. 2. As used in this chapter, "mental abnormality" means a**  
11 **congenital or acquired condition affecting the emotional or**  
12 **volitional capacity that predisposes a person to commit sexually**  
13 **violent offenses to a degree that makes the person a menace to the**  
14 **health and safety of others.**

15 **Sec. 3. As used in this chapter, "predatory act" means an act**



1 committed by a person for the primary purpose of victimization  
2 against:

- 3 (1) a stranger; or
- 4 (2) an individual with whom the person has a relationship.

5 Sec. 4. As used in this chapter, "review committee" refers to the  
6 end of sentence review committee established by section 8 of this  
7 chapter.

8 Sec. 5. As used in this chapter, "sexually violent offense" means:

- 9 (1) rape (IC 35-42-4-1);
- 10 (2) criminal deviate conduct (IC 35-42-4-2);
- 11 (3) child molesting as a Class A or Class B felony (IC  
12 35-42-4-3(a));
- 13 (4) vicarious sexual gratification (IC 35-42-4-5) as a Class A  
14 or Class B felony;
- 15 (5) sexual misconduct with a minor as a Class A or Class B  
16 felony (IC 35-42-4-9); or
- 17 (6) incest (IC 35-46-1-3) as a Class B felony.

18 Sec. 6. As used in this chapter, "sexually violent predator"  
19 means a person who:

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

25 Sec. 7. (a) Whenever it appears that a person may be a sexually  
26 violent predator, an agency confining the person shall give written  
27 notice to the review committee one hundred twenty (120) days  
28 before any of the following occurs:

- 29 (1) The date of release from total confinement of the person if  
30 the person has been convicted of a sexually violent offense.  
31 However, in the case of a person who is returned to  
32 confinement for not more than one hundred twenty (120) days  
33 as a result of revocation of postrelease supervision, written  
34 notice shall be given as soon as practicable following the  
35 person's readmission to confinement.
- 36 (2) The date of release of the person if the person has been  
37 charged with a sexually violent offense and has been adjudged  
38 incompetent to stand trial under IC 35-36-3.
- 39 (3) The date of release of the person if the person has been  
40 found not guilty by reason of insanity of a sexually violent  
41 offense under IC 35-36-2-4.

42 (b) The notice required under subsection (a) must provide the

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1 review committee the following:

2 (1) The confined person's name, identifying factors,  
3 anticipated future residence, and criminal history.

4 (2) Documentation of the confined person's institutional  
5 adjustment and any treatment received.

6 **Sec. 8. (a) The end of sentence review committee is established.**

7 (b) The review committee consists of the following three (3)  
8 members:

9 (1) A board certified psychiatrist or clinical psychologist who  
10 is:

11 (A) employed by the state; and

12 (B) appointed by the governor.

13 (2) A board certified psychiatrist or clinical psychologist who  
14 is:

15 (A) not employed by the state; and

16 (B) appointed by the governor.

17 (3) A current or former prosecuting attorney or deputy  
18 prosecuting attorney with experience prosecuting sex offenses  
19 appointed by the attorney general.

20 (c) The review committee shall review available records of each  
21 person referred to the team under section 7(a) of this chapter. The  
22 review committee may examine all relevant records that may be  
23 considered confidential by law. The review committee, not more  
24 than thirty (30) days after receiving notice under section 7(a) of  
25 this chapter, shall assess whether the person who is the subject of  
26 the notice is a sexually violent predator.

27 (d) If the review committee determines that the person is a  
28 sexually violent predator under this section, the review committee  
29 shall:

30 (1) notify the attorney general of its assessment;

31 (2) inform the attorney general regarding the information  
32 described in section 7(b) of this chapter; and

33 (3) cooperate in collecting data and referring information to  
34 the attorney general as described in section 9 of this chapter.

35 (e) The attorney general shall review the records of each person  
36 the review committee refers to the attorney general under this  
37 section. The assessment of the review committee must be available  
38 to the attorney general.

39 (f) The attorney general shall determine whether a confined  
40 person is a sexually violent predator.

41 **Sec. 9. (a) This section applies if the review committee:**

42 (1) determines that a confined person is a sexually violent

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1 predator; and

2 (2) refers the case to the attorney general.

3 (b) The attorney general is dependent upon the submitting  
4 agency and the review committee to make all reasonable efforts to  
5 gather the necessary information that must precede the decision to  
6 file a petition charging a person with being a sexually violent  
7 predator. If the initial data collection is incomplete, the attorney  
8 general shall:

9 (1) inform the review committee of the respects in which the  
10 document collection is incomplete; and

11 (2) request further document collection before the attorney  
12 general decides whether to file the case.

13 If the review committee, after reasonable efforts, has been unable  
14 to obtain necessary documents, the attorney general shall attempt  
15 to obtain those documents.

16 (c) Information gathered under subsection (b) must include  
17 expert reports describing:

18 (1) the offender's social history;

19 (2) whether the offender currently has a mental abnormality;

20 (3) the present likelihood the person may engage in predatory  
21 acts of sexual violence; and

22 (4) the underlying facts or data for the expert's findings and  
23 opinions.

24 (d) Information gathered under subsection (b) may include the  
25 following:

26 (1) Additional written or taped statements from material  
27 witnesses, including any person who was a material witness to  
28 a prior sexually violent offense involving the offender.

29 (2) Additional written or taped statements from witnesses in  
30 the institution who were involved in delivering treatment  
31 services or supervising the person under investigation during  
32 all previous periods of confinement.

33 **Sec. 10.** The attorney general may not file a petition charging a  
34 person with being a sexually violent predator unless each of the  
35 following requirements are met:

36 (1) The offender has not been paroled from the department of  
37 correction on the most recent offense, based upon a finding  
38 that the offender was fit for release.

39 (2) The victim or the victim's family has been consulted by the  
40 attorney general or the attorney general's agent regarding the  
41 potential filing of the petition.

42 (3) The offender has a pattern of prior predatory acts. The

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1 offender's declarations, if any, or intent to commit predatory  
2 acts in the future must be considered in analyzing the pattern.

3 (4) A petition may not be filed if the offender has been  
4 released from custody.

5 **Sec. 11. (a)** After the attorney general receives written notice  
6 from the review committee under section 8 of this chapter and the  
7 prerequisites set forth in sections 9 and 10 of this chapter are met,  
8 the attorney general may file a petition for a finding of probable  
9 cause in the circuit or superior court having jurisdiction. The  
10 appropriate venue for the filing is either:

11 (1) the county where the respondent was most recently  
12 convicted of a sexually violent offense; or

13 (2) the county where the respondent is currently being  
14 detained.

15 Whenever a person is civilly committed under this chapter, the  
16 jurisdiction of the court that commits the person continues until  
17 the time the person is unconditionally discharged.

18 (b) The petition must:

19 (1) allege that the person who is named respondent in the  
20 petition is a sexually violent predator; and

21 (2) state sufficient facts to support the allegation.

22 **Sec. 12. (a)** Upon the filing of a petition under section 11 of this  
23 chapter, the court shall determine whether probable cause exists  
24 to believe that the person named respondent in the petition is a  
25 sexually violent predator. If the court determines that there is  
26 probable cause to believe the person is a sexually violent predator,  
27 the court shall order that the person remain in the custody of the  
28 agency having custody of the person until a final disposition is  
29 made under section 13 of this chapter.

30 (b) Not more than seventy-two (72) hours after a person is  
31 detained under subsection (a), the person is entitled to notice of and  
32 an opportunity to appear in person at an evidentiary hearing to  
33 contest probable cause as to whether the detained person is a  
34 sexually violent predator. At the evidentiary hearing, the court  
35 shall determine whether evidence supports the finding of probable  
36 cause to believe that the person is a sexually violent predator. The  
37 state may:

38 (1) exclusively rely upon its petition; or

39 (2) supplement the petition with additional testimony or  
40 documentary evidence.

41 (c) At the evidentiary hearing held under subsection (b), the  
42 detained person has the following rights in addition to the rights

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1 previously specified:

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

6 (d) If the court finds after the evidentiary hearing held under  
 7 subsection (b) that evidence supports a probable cause  
 8 determination, the court shall order that the respondent be  
 9 transferred to an appropriate secure facility, including a county  
 10 jail, for a clinical evaluation as to whether the person is a sexually  
 11 violent predator. The evaluation must be conducted by a person  
 12 considered by the court to be professionally qualified to conduct  
 13 the evaluation.

14 Sec. 13. (a) Not more than sixty (60) days after the completion  
 15 of an evidentiary hearing held under section 12(b) of this chapter,  
 16 the court shall conduct a civil trial to determine whether the person  
 17 named as respondent in a petition filed under section 7 of this  
 18 chapter is a sexually violent predator.

19 (b) The person named as respondent in the petition is the  
 20 defendant in the civil trial of the matter.

21 (c) The civil trial may be continued:

- 22 (1) upon the request of the state or the defendant and upon a  
 23 showing of good cause; or  
 24 (2) by the court on its own motion in the administration of  
 25 justice if the defendant is not substantially prejudiced by the  
 26 court's action.

27 Sec. 14. At all stages of proceedings conducted under this  
 28 chapter:

- 29 (1) a respondent or defendant subject to this chapter is  
 30 entitled to the assistance of counsel; and  
 31 (2) if the respondent or defendant is indigent, the court shall  
 32 appoint counsel to assist the person.

33 Sec. 15. (a) Whenever a respondent or defendant is subjected to  
 34 an examination under this chapter, the person may retain an  
 35 expert or other professional person to perform an examination on  
 36 the person's behalf. If the person wishes to be examined by a  
 37 qualified expert or professional person of the person's own choice,  
 38 the examiner must be permitted to have reasonable access to:

- 39 (1) the person for the purpose of the examination; and  
 40 (2) all relevant medical and psychological records and reports  
 41 concerning the person.

42 (b) If a respondent or defendant is indigent, the court, upon the

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1 person's request, shall determine whether the services performed  
2 under subsection (a) are necessary and whether the requested  
3 compensation for the services is reasonable. If the court determines  
4 that the services are necessary and the expert or professional  
5 person's requested compensation for the services is reasonable, the  
6 court shall assist the respondent or defendant in obtaining an  
7 expert or a professional person to perform the examination or  
8 participate in the trial on the person's behalf. The court shall  
9 approve payment for the services upon the filing of a certified  
10 claim for compensation supported by a written statement  
11 specifying:

- 12 (1) the time expended;
- 13 (2) services rendered;
- 14 (3) expenses incurred on behalf of the person; and
- 15 (4) compensation received in the same case or for the same  
16 services from any other source.

17 **Sec. 16.** A defendant or the attorney general may demand that  
18 the civil trial conducted under section 13 of this chapter be a trial  
19 by jury. A demand for jury trial must be filed in writing at least  
20 four (4) days before trial. The court, upon its own motion, may  
21 order a jury trial. If no demand is made and if the court does not  
22 order a jury trial upon its own motion, the trial must be before the  
23 court.

24 **Sec. 17. (a)** In a civil trial held under this chapter, the court or  
25 jury shall determine beyond a reasonable doubt whether the  
26 defendant is a sexually violent predator. A jury verdict that the  
27 defendant is a sexually violent predator must be unanimous. The  
28 verdict may be appealed.

29 (b) If the court or jury determines that the defendant is a  
30 sexually violent predator, the defendant must be committed by the  
31 court to the custody of the division of mental health for control,  
32 care, and treatment until the defendant's mental abnormality has  
33 changed to the extent that it is safe to return the defendant to the  
34 community. The control, care, and treatment of the defendant must  
35 be provided at a facility operated by the division of mental health.  
36 A defendant committed to the control, care, and treatment of the  
37 division of mental health under this chapter must be:

- 38 (1) confined in a secure facility; and
- 39 (2) properly segregated from all other patients;

40 under the supervision of the division of mental health. The division  
41 of mental health shall develop a plan for the treatment and care of  
42 the defendant. The plan must provide for treatment that is likely

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1 to change the person's mental abnormality to the extent that the  
 2 person is not likely to commit predatory acts of sexual violence.  
 3 The division of mental health shall provide for treatment and care  
 4 in conformity with the plan developed under this section. The  
 5 division of mental health shall review and revise at least annually,  
 6 as appropriate, the plan of treatment and care for a defendant.

7 **Sec. 18.** The division of mental health may enter into an  
 8 interagency agreement with the department of correction for the  
 9 confinement of persons who are adjudicated sexually violent  
 10 predators under section 17 of this chapter. A sexually violent  
 11 predator who is confined by the department of correction under  
 12 the interagency agreement must be housed and managed  
 13 separately from offenders in the custody of the department of  
 14 correction, and except for occasional instances of supervised  
 15 incidental contact, a sexually violent predator must be segregated  
 16 from the offenders.

17 **Sec. 19.** If a court or jury is not satisfied beyond a reasonable  
 18 doubt that a defendant is a sexually violent predator, the court  
 19 shall order the defendant's release. Upon a mistrial, the court shall  
 20 order that the defendant be held in a secure facility, including a  
 21 county jail, until another trial is conducted. A subsequent trial  
 22 following a mistrial must be held not more than ninety (90) days  
 23 after the declaration of mistrial in the previous trial, unless the  
 24 subsequent trial is continued under section 13 of this chapter.

25 **Sec. 20.** If a person charged with a sexually violent offense has  
 26 been found incompetent to stand trial and is about to be released  
 27 and the person's commitment is sought under this chapter, the  
 28 court shall first hear evidence and determine whether the person  
 29 committed the act charged. A hearing conducted under this section  
 30 must comply with all procedures specified in this chapter. After  
 31 hearing the evidence, the court shall make specific findings  
 32 regarding the following:

- 33 (1) Whether the person committed the act charged.
- 34 (2) The extent to which the person's incompetence or  
 35 developmental disability affects the outcome of the hearing,  
 36 including its effect on the person's ability to:
  - 37 (A) consult with and assist counsel; and
  - 38 (B) testify on the person's own behalf.
- 39 (3) The extent to which the evidence could be reconstructed  
 40 without the assistance of the person.
- 41 (4) The strength of the prosecuting attorney's case.

42 If, after the conclusion of a hearing conducted under this section,



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1 the court finds beyond a reasonable doubt that the person  
 2 committed the act charged, the court shall enter a final order,  
 3 appealable by the person, and may proceed to consider whether the  
 4 person should be committed under this chapter.

5 **Sec. 21. (a)** An annual examination of the mental condition of a  
 6 person committed under this chapter must be conducted. The  
 7 person may retain, or upon request if the person is indigent, the  
 8 court may appoint, a qualified professional to examine the person.  
 9 The expert or professional person shall have access to all records  
 10 concerning the person.

11 **(b)** An annual report regarding the examination conducted  
 12 under subsection (a) must be provided to the court that committed  
 13 the person under this chapter. The court shall conduct an annual  
 14 review of the status of the committed person.

15 **(c)** Notwithstanding IC 16-39-2-3, records related to an annual  
 16 examination and report prepared under this section may be  
 17 released to the following:

- 18 (1) The court.
- 19 (2) The division of mental health.
- 20 (3) The committed person, the committed person's attorney,  
 21 and a qualified professional who examines a committed  
 22 person under this section.
- 23 (4) The attorney general.

24 The records may be used to make a report or determination  
 25 concerning the discharge of the committed person. Neither this  
 26 subsection nor any other law regarding the confidentiality of  
 27 patient records precludes the release and disclosure of a patient's  
 28 records or the annual report in a hearing or trial.

29 **Sec. 22.** This chapter does not prohibit a committed person from  
 30 petitioning the court for discharge. The division of mental health  
 31 shall provide the committed person with an annual written notice  
 32 of the person's right to petition the court for release over the  
 33 division's objection. The division shall forward the notice to the  
 34 court with the annual report. The committed person has the right  
 35 to have an attorney represent the person at a hearing on the  
 36 petition, but the person is not entitled to be present at the hearing.

37 **Sec. 23.** If the court at a hearing on a petition filed under section  
 38 22 of this chapter determines that probable cause exists to believe  
 39 that the person's mental abnormality has changed to the extent  
 40 that the person is:

- 41 (1) safe to be released back into the community; and
- 42 (2) not likely to engage in acts of sexual violence if discharged;



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1 the court shall schedule an evidentiary hearing. At the evidentiary  
 2 hearing, the committed person is entitled to be present and is  
 3 entitled to the benefit of all constitutional protections that were  
 4 afforded the person at the initial commitment proceeding.

5 **Sec. 24.** The attorney general shall represent the state at an  
 6 evidentiary hearing scheduled under section 23 of this chapter. The  
 7 state has the right to a jury trial and to have the committed person  
 8 evaluated by experts chosen by the state. The committed person is  
 9 entitled to have experts evaluate the person on the person's behalf,  
 10 and the court shall appoint an expert if the person is indigent and  
 11 requests an appointment. The burden of proof at the hearing is  
 12 upon the state to prove beyond a reasonable doubt that the  
 13 committed person's mental abnormality remains to an extent that:

- 14 (1) the person is not safe to be released back into the
- 15 community; and
- 16 (2) if released, the person is likely to engage in acts of sexual
- 17 violence.

18 **Sec. 25.** The involuntary detention or commitment of a person  
 19 under this chapter must conform to constitutional requirements  
 20 for care and treatment.

21 **Sec. 26. (a)** If the director of the division of mental health  
 22 determines that a committed person's mental abnormality has  
 23 changed to the extent that the person is not likely to commit  
 24 predatory acts of sexual violence if released, the director of the  
 25 division of mental health shall authorize the committed person to  
 26 petition the court for release.

27 (b) A petition filed under subsection (a) must be filed with the  
 28 court having jurisdiction and with the attorney general. The court,  
 29 upon receipt of the petition for release, shall order a hearing to be  
 30 held not more than thirty (30) days after the petition is filed. The  
 31 attorney general shall represent the state and is entitled to have the  
 32 petitioner examined by an expert or professional person of the  
 33 attorney general's choice.

34 **Sec. 27.** A hearing under section 26 of this chapter must be  
 35 before a jury if demanded by either the petitioner or the attorney  
 36 general. The burden of proof is upon the attorney general to show  
 37 beyond a reasonable doubt that:

- 38 (1) the petitioner's mental abnormality remains to an extent
- 39 that the petitioner is not safe to be released back into the
- 40 community; and
- 41 (2) if discharged, the petitioner is likely to commit predatory
- 42 acts of sexual violence.



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1           **Sec. 28. (a) This chapter does not prohibit a person from filing**  
 2 **a petition for discharge from commitment. However, if:**

3           **(1) a person has previously filed a petition for discharge**  
 4 **without the approval of the director of the division of mental**  
 5 **health; and**

6           **(2) the court having jurisdiction determined either upon**  
 7 **review of the petition or following a hearing that:**

8           **(A) the petitioner's petition was frivolous; or**

9           **(B) the petitioner's condition had not changed to the extent**  
 10 **that the person was safe to be released into the community;**  
 11 **the court shall deny the subsequent petition unless the petition**  
 12 **contains facts upon which a court could find the condition of the**  
 13 **petitioner had changed to the extent that a hearing was warranted.**

14           **(b) Upon receipt of a first or subsequent petition from a**  
 15 **committed person without the director's approval, the court shall:**

16           **(1) review the petition; and**

17           **(2) determine if the petition is based upon frivolous grounds,**  
 18 **and if so shall deny the petition without a hearing;**

19 **whenever possible.**

20           **Sec. 29. The director of the division of mental health is**  
 21 **responsible for all costs relating to the evaluation and treatment of**  
 22 **persons committed to the division's custody under this chapter.**

23           **Sec. 30. (a) In addition to any other information required to be**  
 24 **released under this chapter, before the release of a person**  
 25 **committed under this chapter, the director of the division of mental**  
 26 **health shall give written notice of the person's release:**

27           **(1) to any victim of the person's activities or crime who is**  
 28 **alive and whose address is known to the director; or**

29           **(2) if a victim of the person's activities or crime is deceased, to**  
 30 **the victim's family, if the family's address is known to the**  
 31 **director.**

32           **(b) Failure to notify is not a reason for postponement of release.**  
 33 **This section does not create a cause of action against the state or an**  
 34 **employee of the state acting within the scope of the employee's**  
 35 **employment as a result of the failure to notify under this section.**

36           **Sec. 31. (a) To protect the public, relevant information and**  
 37 **records that are otherwise confidential or privileged must be**  
 38 **released to the agency with jurisdiction or to the attorney general**  
 39 **for the purpose of:**

40           **(1) meeting the notice requirement under section 7 of this**  
 41 **chapter; and**

42           **(2) determining whether a person is or continues to be a**

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sexually violent predator.  
(b) This section is supplemental to the other provisions of this chapter.

Sec. 32. Any of the following items that have been submitted to a court or admitted into evidence under this chapter are part of the record but must be sealed and may be opened only upon order of the court:

- (1) Psychological reports.
- (2) Drug and alcohol reports.
- (3) Treatment records.
- (4) Reports of the diagnostic center.
- (5) Medical records.
- (6) Victim impact statements.

SECTION 2. [EFFECTIVE JULY 1, 1999] IC 12-26-17, as added by this act, applies to a person who may be a sexually violent predator and is scheduled to be released from confinement after October 31, 1999.

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