



HOUSE BILL No. 5904

November 10, 1994, Introduced by Rep Olshove and referred to the Committee on Judiciary

A bill to amend Act No 258 of the Public Acts of 1974,
entitled as amended
"Mental health code "
as amended, being sections 330 1001 to 330 2106 of the Michigan
Compiled Laws, by adding chapter 10a

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Act No 258 of the Public Acts of 1974, as
2 amended, being sections 330 1001 to 330 2106 of the Michigan
3 Compiled Laws, is amended by adding chapter 10a to read as
4 follows

CHAPTER 10A

6 SEC 1070 AS USED IN THIS CHAPTER

7 (A) "SEXUALLY VIOLENT PREDATOR" MEANS A PERSON WHO HAS BEEN
8 CONVICTED OF OR CHARGED WITH A SEXUALLY VIOLENT OFFENSE AND WHO
9 SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER THAT

1 MAKES THE PERSON LIKELY TO ENGAGE IN HABITUAL PREDATORY ACTS OF
2 SEXUAL VIOLENCE

3 (B) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CON-
4 DITION AFFECTING THE EMOTIONAL OR VOLITIONAL CAPACITY THAT PRE-
5 DISPOSES A PERSON TO THE COMMISSION OF SEXUALLY VIOLENT OFFENSES
6 IN A DEGREE CONSTITUTING THE PERSON A MENACE TO THE HEALTH AND
7 SAFETY OF OTHERS

8 (C) "PREDATORY ACTS" MEANS ACTS DIRECTED TOWARD INDIVIDUALS
9 WITH WHOM A RELATIONSHIP HAS BEEN ESTABLISHED OR PROMOTED FOR THE
10 PRIMARY PURPOSE OF VICTIMIZATION

11 (D) "SEXUALLY VIOLENT OFFENSE" MEANS A VIOLATION OF 1 OR
12 MORE OF THE FOLLOWING COMMITTED ON, BEFORE, OR AFTER JANUARY 1,
13 1995

14 (i) SECTION 520B OF THE MICHIGAN PENAL CODE, ACT NO 328 OF
15 THE PUBLIC ACTS OF 1931, BEING SECTION 750 520B OF THE MICHIGAN
16 COMPILED LAWS, HAVING TO DO WITH FIRST DEGREE CRIMINAL SEXUAL
17 CONDUCT

18 (ii) SECTION 520C OF ACT NO 328 OF THE PUBLIC ACTS OF 1931,
19 BEING SECTION 750 520C OF THE MICHIGAN COMPILED LAWS, HAVING TO
20 DO WITH SECOND DEGREE CRIMINAL SEXUAL CONDUCT

21 (iii) SECTION 520D OF ACT NO 328 OF THE PUBLIC ACTS OF
22 1931, BEING SECTION 750 520D OF THE MICHIGAN COMPILED LAWS,
23 HAVING TO DO WITH THIRD DEGREE CRIMINAL SEXUAL CONDUCT

24 (iv) SECTION 520E OF ACT NO 328 OF THE PUBLIC ACTS OF 1931,
25 BEING SECTION 750 520E OF THE MICHIGAN COMPILED LAWS, HAVING TO
26 DO WITH FOURTH DEGREE CRIMINAL SEXUAL CONDUCT

1 (v) SECTION 520G OF ACT NO 328 OF THE PUBLIC ACTS OF 1931
2 BEING SECTION 750 520G OF THE MICHIGAN COMPILED LAWS HAVING TO
3 DO WITH ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT

4 (vi) A FELONY OFFENSE UNDER FEDERAL LAW OR ANOTHER STATE S
5 LAW THAT, IF COMMITTED IN THIS STATE, WOULD BE A VIOLATION
6 DESCRIBED IN THIS SECTION

7 (vii) ANY OTHER FELONY OFFENSE UNDER THE LAWS OF THIS STATE
8 THAT AT TRIAL HAS BEEN DETERMINED BEYOND ANY REASONABLE DOUBT TO
9 HAVE BEEN SEXUALLY MOTIVATED

10 SEC 1070A THE LEGISLATURE FINDS THAT THERE EXIST A SMALL
11 BUT EXTREMELY DANGEROUS NUMBER OF SEXUALLY VIOLENT PREDATORS WHO
12 HAVE ANTISOCIAL PERSONALITY FEATURES THAT ARE NOT AMENABLE TO
13 EXISTING TREATMENTS FOR MENTAL ILLNESS AND WHO MAY NOT QUALIFY
14 FOR INVOLUNTARY COMMITMENT TO A MENTAL HEALTH FACILITY AS ALLOWED
15 UNDER THIS ACT THE LEGISLATURE FURTHER FINDS THAT SEXUALLY VIO-
16 LENT PREDATORS ARE LIKELY TO ENGAGE IN REPEATED ACTS OF PREDATORY
17 SEXUAL VIOLENCE, THAT THE PROGNOSIS FOR CURING SEXUALLY VIOLENT
18 OFFENDERS IS POOR, THAT THE TREATMENT APPROPRIATE FOR SEXUALLY
19 VIOLENT OFFENDERS IS VERY LONG-TERM, AND THAT THOSE TREATMENTS
20 DIFFER GREATLY FROM THE TREATMENTS REQUIRED BY PERSONS WHO ARE
21 INVOLUNTARILY COMMITTED

22 SEC 1071 THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH
23 A PERSON WAS CONVICTED OR CHARGED, OR THE ATTORNEY GENERAL IF
24 REQUESTED BY THE PROSECUTING ATTORNEY, MAY FILE A PETITION WITH
25 THE PROBATE COURT ALLEGING THAT A PERSON IS A SEXUALLY VIOLENT
26 PREDATOR AND STATING SUFFICIENT FACTS TO SUPPORT THE ALLEGATION,
27 IF 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES EXIST

1 (A) THE PERSON WAS CONVICTED OF A SEXUALLY VIOLENT OFFENSE
2 AND HIS OR HER SENTENCE IS ABOUT TO EXPIRE OR HAS EXPIRED ON OR
3 AFTER JANUARY 1, 1995

4 (B) THE PERSON WAS FOUND TO HAVE COMMITTED A SEXUALLY VIO-
5 LENT OFFENSE AS A JUVENILE, AND HIS OR HER TERM OF CONFINEMENT IS
6 ABOUT TO EXPIRE, OR HAS EXPIRED ON OR AFTER JANUARY 1, 1995

7 (C) THE PERSON WAS CHARGED WITH A SEXUALLY VIOLENT OFFENSE
8 HAS BEEN DETERMINED TO BE INCOMPETENT TO STAND TRIAL, AND IS
9 ABOUT TO BE RELEASED, OR HAS BEEN RELEASED ON OR AFTER JANUARY 1
10 1995

11 (D) THE PERSON HAS BEEN FOUND NOT GUILTY BY REASON OF INSAN-
12 ITY OF A SEXUALLY VIOLENT OFFENSE, HE OR SHE IS ABOUT TO BE
13 RELEASED, OR HAS BEEN RELEASED ON OR AFTER JANUARY 1, 1995 AND
14 IT APPEARS THAT THE PERSON MAY BE A SEXUALLY VIOLENT PREDATOR

15 SEC 1072 UPON THE FILING OF A PETITION UNDER SECTION
16 1071, THE JUDGE SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
17 BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A SEXUALLY VIO-
18 LENT PREDATOR IF THE DETERMINATION IS MADE THAT PROBABLE CAUSE
19 EXISTS THE JUDGE SHALL DIRECT THAT THE PERSON BE TAKEN INTO CUS-
20 TODY AND THE PERSON SHALL BE TRANSFERRED TO THE CENTER FOR FOREN-
21 SIC PSYCHIATRY FOR AN EVALUATION AS TO WHETHER THE PERSON IS A
22 SEXUALLY VIOLENT PREDATOR

23 SEC 1073 (1) NOT MORE THAN 45 DAYS AFTER THE FILING OF A
24 PETITION PURSUANT TO SECTION 1071, THE COURT SHALL CONDUCT A
25 TRIAL TO DETERMINE WHETHER THE PERSON IS A SEXUALLY VIOLENT
26 PREDATOR THE PERSON, THE PROSECUTING ATTORNEY OR ATTORNEY
27 GENERAL, OR THE JUDGE HAS THE RIGHT TO DEMAND THAT THE TRIAL BE

1 BEFORE A JURY IF NO JURY DEMAND IS MADE THE TRIAL SHALL BE
2 BEFORE THE COURT

3 (2) AT ALL STAGES OF THE PROCEEDINGS UNDER THIS CHAPTER, A
4 PERSON SUBJECT TO THIS CHAPTER IS ENTITLED TO THE ASSISTANCE OF
5 COUNSEL IF THE PERSON IS INDIGENT THE COURT SHALL APPOINT
6 COUNSEL TO ASSIST HIM OR HER

7 (3) WHENEVER A PERSON IS SUBJECTED TO AN EXAMINATION UNDER
8 THIS CHAPTER, HE OR SHE MAY RETAIN EXPERTS OR PROFESSIONAL PER-
9 SONS TO PERFORM AN EXAMINATION ON HIS OR HER BEHALF IF THE
10 PERSON WISHES TO BE EXAMINED BY A QUALIFIED EXPERT OR PROFES-
11 SIONAL PERSON OF HIS OR HER OWN CHOICE, THE EXAMINER SHALL BE
12 PERMITTED TO HAVE REASONABLE ACCESS TO THE PERSON FOR THE PURPOSE
13 OF THE EXAMINATION, AND TO ALL RELEVANT MEDICAL AND PSYCHOLOGICAL
14 RECORDS AND REPORTS IF THE PERSON IS INDIGENT, THE COURT SHALL,
15 UPON THE PERSON'S REQUEST, ASSIST THE PERSON IN OBTAINING AN
16 EXPERT OR PROFESSIONAL PERSON TO PERFORM AN EXAMINATION OR PAR-
17 TICIPATE IN THE TRIAL ON THE PERSON'S BEHALF

18 SEC 1074 (1) THE COURT OR JURY SHALL DETERMINE WHETHER,
19 BEYOND A REASONABLE DOUBT THE PERSON IS A SEXUALLY VIOLENT
20 PREDATOR IF THE STATE ALLEGES THAT THE PRIOR SEXUALLY VIOLENT
21 OFFENSE THAT FORMS THE BASIS FOR THE PETITION FOR COMMITMENT WAS
22 AN ACT THAT WAS SEXUALLY MOTIVATED AS PROVIDED BY SECTION
23 1070(D)(vii), THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
24 THE ALLEGED SEXUALLY VIOLENT ACT WAS SEXUALLY MOTIVATED

25 (2) IF THE COURT OR JURY DETERMINES THAT THE PERSON IS A
26 SEXUALLY VIOLENT PREDATOR, THE PERSON SHALL BE COMMITTED TO THE
27 CUSTODY OF THE DEPARTMENT IN A SECURE FACILITY FOR CONTROL, CARE,

1 AND TREATMENT UNTIL SUCH TIME AS THE PERSON S MENTAL ABNORMALITY
2 OR PERSONALITY DISORDER HAS SO CHANGED THAT THE PERSON IS SAFE TO
3 BE AT LARGE AND IS NOT LIKELY TO COMMIT SEXUALLY VIOLENT
4 OFFENSES THE CONTROL, CARE, AND TREATMENT SHALL BE PROVIDED AT
5 A FACILITY OPERATED BY THE DEPARTMENT THE FACILITY SHALL NOT BE
6 LOCATED ON THE GROUNDS OF A STATE MENTAL FACILITY OR REGIONAL
7 HABILITATION CENTER UNLESS THE DEPARTMENT OF CORRECTIONS CERTI-
8 FIES THAT THE FACILITY IS SUFFICIENTLY SECURE FOR THIS
9 POPULATION THE INVOLUNTARY DETENTION OR COMMITMENT OF PERSONS
10 UNDER THIS CHAPTER SHALL CONFORM TO CONSTITUTIONAL REQUIREMENTS
11 FOR CARE AND TREATMENT

12 (3) IF THE COURT OR JURY IS NOT SATISFIED BEYOND A REASON-
13 ABLE DOUBT THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR, THE
14 COURT SHALL DISMISS THE PETITION

15 SEC 1075 (1) IF THE PERSON CHARGED WITH A SEXUALLY VIO-
16 LENT OFFENSE HAS BEEN FOUND INCOMPETENT TO STAND TRIAL, AND IS
17 ABOUT TO BE OR HAS BEEN RELEASED PURSUANT TO SECTION 1044 AND
18 HIS OR HER COMMITMENT IS SOUGHT UNDER THIS CHAPTER, THE COURT
19 SHALL FIRST HEAR EVIDENCE AND DETERMINE WHETHER THE PERSON DID
20 COMMIT THE ACT OR ACTS CHARGED IF THE COURT DID NOT ENTER A FIND-
21 ING PRIOR TO DISMISSAL UNDER SECTION 1044 THAT THE PERSON COMMIT-
22 TED THE ACT OR ACTS CHARGED THE HEARING ON THIS ISSUE SHALL
23 COMPLY WITH ALL THE PROCEDURES SPECIFIED IN THIS CHAPTER THE
24 RULES OF EVIDENCE APPLICABLE IN CRIMINAL CASES APPLY TO A TRIAL
25 UNDER THIS SECTION, AND THE PERSON HAS ALL CONSTITUTIONAL RIGHTS
26 AVAILABLE TO DEFENDANTS AT CRIMINAL TRIALS, OTHER THAN THE RIGHT
27 NOT TO BE TRIED WHILE INCOMPETENT

1 (2) AFTER HEARING EVIDENCE ON THE ISSUE THE COURT SHALL
2 MAKE SPECIFIC FINDINGS ON WHETHER THE PERSON DID COMMIT THE ACT
3 OR ACTS CHARGED, THE EXTENT TO WHICH THE PERSON S INCOMPETENCE OR
4 DEVELOPMENTAL DISABILITY AFFECTED THE OUTCOME OF THE HEARING,
5 INCLUDING ITS EFFECT ON THE PERSON'S ABILITY TO CONSULT WITH AND
6 ASSIST COUNSEL AND TO TESTIFY IN HIS OR HER OWN BEHALF, THE
7 EXTENT TO WHICH THE EVIDENCE COULD BE RECONSTRUCTED WITHOUT THE
8 ASSISTANCE OF THE PERSON, AND THE STRENGTH OF THE PROSECUTION S
9 CASE IF, AFTER THE CONCLUSION OF THE HEARING ON THIS ISSUE, THE
10 COURT FINDS, BEYOND A REASONABLE DOUBT, THAT THE PERSON DID
11 COMMIT THE ACT OR ACTS CHARGED, IT SHALL ENTER A FINAL ORDER,
12 APPEALABLE BY THE PERSON, ON THAT ISSUE, AND MAY PROCEED TO CON-
13 sider WHETHER THE PERSON SHOULD BE COMMITTED PURSUANT TO SECTION
14 1074

15 SEC 1076 A PERSON COMMITTED UNDER THIS CHAPTER SHALL BE
16 EXAMINED AT LEAST ONCE EACH YEAR THE PERSON MAY RETAIN OR IF
17 HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT MAY APPOINT A
18 QUALIFIED EXPERT OR A PROFESSIONAL PERSON TO EXAMINE HIM OR HER
19 THE EXPERT OR PROFESSIONAL PERSON SHALL HAVE ACCESS TO ALL
20 RECORDS CONCERNING THE PERSON THE DEPARTMENT SHALL PROVIDE AN
21 ANNUAL REPORT TO THE COURT THAT COMMITTED THE PERSON UNDER THIS
22 CHAPTER

23 SEC 1077 (1) IF THE DIRECTOR OF THE DEPARTMENT OR THE
24 DIRECTOR OF THE FACILITY IN WHICH THE PERSON HAS BEEN COMMITTED
25 DETERMINES THAT THE PERSON S MENTAL ABNORMALITY HAS CHANGED SO
26 THAT THE PERSON IS NOT LIKELY TO COMMIT SEXUALLY VIOLENT OFFENSES
27 IF RELEASED THE DIRECTOR OF THE DEPARTMENT OR THE DIRECTOR OF

1 THE FACILITY SHALL AUTHORIZE THE PERSON TO PETITION THE COURT FOR
2 RELEASE THE PETITION SHALL BE SERVED UPON THE COURT AND THE
3 PROSECUTING ATTORNEY

4 (2) UPON RECEIPT OF A PETITION FOR RELEASE, THE COURT SHALL
5 ORDER A HEARING TO BE HELD WITHIN 45 DAYS OF THE RECEIPT THE
6 PROSECUTING ATTORNEY OR THE ATTORNEY GENERAL, IF REQUESTED BY THE
7 COUNTY, SHALL REPRESENT THE STATE, AND SHALL HAVE THE RIGHT TO
8 HAVE THE PETITIONER EXAMINED BY AN EXPERT OR PROFESSIONAL PERSON
9 OF HIS OR HER CHOICE

10 (3) THE HEARING SHALL BE BEFORE A JURY IF DEMANDED BY EITHER
11 THE PETITIONER OR THE PROSECUTING ATTORNEY OR ATTORNEY GENERAL
12 THE BURDEN OF PROOF SHALL BE UPON THE PROSECUTING ATTORNEY OR
13 ATTORNEY GENERAL TO SHOW BEYOND A REASONABLE DOUBT THAT THE
14 PETITIONER'S MENTAL ABNORMALITY OR PERSONALITY DISORDER REMAINS
15 SO THAT THE PETITIONER IS NOT SAFE TO BE AT LARGE AND THAT IF
16 DISCHARGED IS LIKELY TO COMMIT SEXUALLY VIOLENT OFFENSES

17 SEC 1078 (1) NOTWITHSTANDING SECTION 1077, A PERSON MAY
18 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
19 DIRECTOR OF THE DEPARTMENT OR THE DIRECTOR OF THE FACILITY THE
20 DIRECTOR OF THE DEPARTMENT SHALL PROVIDE THE COMMITTED PERSON
21 WITH AN ANNUAL WRITTEN NOTICE OF THE PERSON'S RIGHT TO PETITION
22 THE COURT FOR RELEASE OVER THE DEPARTMENT DIRECTOR'S OR FACILITY
23 DIRECTOR'S OBJECTION THE NOTICE SHALL CONTAIN A WAIVER OF
24 RIGHTS THE DIRECTOR OF THE DEPARTMENT SHALL FORWARD THE NOTICE
25 AND WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT REQUIRED
26 UNDER SECTION 1076

1 (2) IF THE PERSON DOES NOT AFFIRMATIVELY WAIVE THE RIGHT TO
2 PETITION THE COURT SHALL SET A SHOW CAUSE HEARING TO DETERMINE
3 WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
4 PERSON'S CONDITION HAS SO CHANGED THAT HE OR SHE IS SAFE TO BE AT
5 LARGE THE COMMITTED PERSON HAS A RIGHT TO HAVE AN ATTORNEY REP-
6 RESENT HIM OR HER AT THE SHOW CAUSE HEARING, BUT THE COMMITTED
7 PERSON IS NOT ENTITLED TO BE PRESENT AT THE SHOW CAUSE HEARING
8 IF THE COURT AT THE SHOW CAUSE HEARING DETERMINES THAT PROBABLE
9 CAUSE EXISTS TO BELIEVE THAT THE PERSON'S MENTAL ABNORMALITY HAS
10 SO CHANGED THAT THE PERSON IS SAFE TO BE AT LARGE AND IS NOT
11 LIKELY TO ENGAGE IN SEXUALLY VIOLENT OFFENSES IF DISCHARGED, THEN
12 THE COURT SHALL SET A HEARING ON THE ISSUE THE COMMITTED PERSON
13 IS ENTITLED TO BE PRESENT AT THE HEARING AND TO HAVE THE BENEFIT
14 OF ALL CONSTITUTIONAL PROTECTIONS THAT WERE AFFORDED TO HIM OR
15 HER AT THE INITIAL COMMITMENT PROCEEDING THE PROSECUTING ATTOR-
16 NEY OR THE ATTORNEY GENERAL IF REQUESTED BY THE COUNTY SHALL REP-
17 RESENT THE STATE AND SHALL HAVE A RIGHT TO A JURY TRIAL AND TO
18 HAVE THE COMMITTED PERSON EVALUATED BY EXPERTS CHOSEN BY THE
19 STATE THE COMMITTED PERSON ALSO HAS THE RIGHT TO HAVE EXPERTS
20 EVALUATE HIM OR HER ON HIS OR HER BEHALF AND THE COURT SHALL
21 APPOINT AN EXPERT IF THE PERSON IS INDIGENT AND REQUESTS AN
22 APPOINTMENT THE BURDEN OF PROOF AT THE HEARING IS UPON THE
23 STATE TO PROVE BEYOND A REASONABLE DOUBT THAT THE COMMITTED
24 PERSON'S MENTAL ABNORMALITY REMAINS SUCH THAT THE PERSON IS NOT
25 SAFE TO BE AT LARGE AND IF RELEASED IS LIKELY TO ENGAGE IN SEXU-
26 ALLY VIOLENT OFFENSES

1 SEC 1079 THIS CHAPTER DOES NOT PROHIBIT A PERSON FROM
2 FILING A PETITION FOR DISCHARGE PURSUANT TO THIS CHAPTER IF A
3 PERSON HAS PREVIOUSLY FILED A PETITION FOR DISCHARGE WITHOUT THE
4 DEPARTMENT DIRECTOR'S OR FACILITY DIRECTOR S APPROVAL AND THE
5 COURT DETERMINED, EITHER UPON REVIEW OF THE PETITION OR FOLLOWING
6 A HEARING, THAT THE PETITIONER'S PETITION WAS FRIVOLOUS OR THAT
7 THE PETITIONER'S CONDITION HAD NOT SO CHANGED THAT HE OR SHE WAS
8 SAFE TO BE AT LARGE, THEN THE COURT SHALL DENY THE SUBSEQUENT
9 PETITION UNLESS THE PETITION CONTAINS FACTS UPON WHICH A COURT
10 COULD FIND THAT THE CONDITION OF THE PETITIONER HAD SO CHANGED
11 THAT A HEARING WAS WARRANTED UPON RECEIPT OF A FIRST OR SUBSE-
12 QUENT PETITION FROM A COMMITTED PERSON WITHOUT THE DEPARTMENT
13 DIRECTOR'S OR FACILITY DIRECTOR'S APPROVAL THE COURT SHALL
14 REVIEW THE PETITION AND DETERMINE IF THE PETITION IS BASED UPON
15 FRIVOLOUS GROUNDS AND IF SO SHALL DENY THE PETITION WITHOUT A
16 HEARING

17 SEC 1080 IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO
18 BE RELEASED UNDER THIS CHAPTER, AND UNLESS OTHERWISE PROHIBITED
19 BY LAW, THE DEPARTMENT SHALL RELEASE RELEVANT INFORMATION THAT IS
20 NECESSARY TO PROTECT THE PUBLIC CONCERNING A SPECIFIC SEXUALLY
21 VIOLENT PREDATOR COMMITTED UNDER THIS CHAPTER