

HOUSE BILL No. 5292

October 16, 1997, Introduced by Reps. Jaye, Goschka, McBryde, London, McManus and Perricone and referred to the Committee on Mental Health.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding chapter 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 10A

2 SEC. 1060. AS USED IN THIS CHAPTER:

3 (A) "AGENCY" MEANS A DEPARTMENT OR AGENCY THAT IS AUTHORIZED
4 TO DIRECT THE RELEASE OF AN INDIVIDUAL WHO IS SERVING A SENTENCE
5 OR TERM OF CONFINEMENT OR WHO IS RECEIVING TREATMENT.

6 (B) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CON-
7 DITION AFFECTING AN INDIVIDUAL'S EMOTIONAL OR VOLITIONAL CAPACITY
8 THAT PREDISPOSES THE INDIVIDUAL TO COMMIT SEXUALLY VIOLENT
9 OFFENSES TO A DEGREE THAT RENDERS THE INDIVIDUAL A MENACE TO THE
10 HEALTH AND SAFETY OF OTHERS.

1 (C) "PREDATORY ACTS" MEANS ACTS DIRECTED TOWARD STRANGERS OR
2 INDIVIDUALS WITH WHOM A RELATIONSHIP HAS BEEN ESTABLISHED OR
3 PROMOTED FOR THE PRIMARY PURPOSE OF VICTIMIZATION.

4 (D) "SEXUALLY MOTIVATED" MEANS THAT 1 OF THE PURPOSES FOR
5 WHICH THE DEFENDANT COMMITTED THE CRIME WAS THE DEFENDANT'S
6 SEXUAL GRATIFICATION.

7 (E) "SEXUALLY VIOLENT OFFENSE" MEANS 1 OR MORE OF THE FOL-
8 LOWING COMMITTED ON, BEFORE, OR AFTER JANUARY 1, 1998:

9 (i) FIRST DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
10 SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
11 750.520B.

12 (ii) SECOND DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
13 SECTION 520C OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
14 750.520C.

15 (iii) THIRD DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
16 SECTION 520D OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
17 750.520D.

18 (iv) FOURTH DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
19 SECTION 520E OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
20 750.520E.

21 (v) ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT,
22 AS DESCRIBED IN SECTION 520G OF THE MICHIGAN PENAL CODE, 1931 PA
23 328, MCL 750.520G.

24 (vi) A FELONY OFFENSE UNDER FEDERAL LAW OR ANOTHER STATE'S
25 LAW THAT UNDER THE LAWS OF THIS STATE WOULD BE A SEXUALLY VIOLENT
26 OFFENSE AS DEFINED IN THIS SECTION.

1 (vii) ANOTHER FELONY OFFENSE UNDER THE LAWS OF THIS STATE
2 THAT AT TRIAL HAS BEEN DETERMINED BEYOND ANY REASONABLE DOUBT TO
3 HAVE BEEN SEXUALLY MOTIVATED.

4 (F) "SEXUALLY VIOLENT PREDATOR" MEANS AN INDIVIDUAL WHO HAS
5 BEEN CONVICTED OF OR CHARGED WITH A SEXUALLY VIOLENT OFFENSE AND
6 WHO SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER
7 THAT MAKES THE INDIVIDUAL LIKELY TO ENGAGE IN PREDATORY ACTS OF
8 SEXUAL VIOLENCE IF NOT CONFINED IN A SECURE FACILITY.

9 SEC. 1061. (1) IF AN AGENCY THAT HAS JURISDICTION OVER AN
10 INDIVIDUAL DESCRIBED IN SECTION 1062 DETERMINES THAT THE INDIVID-
11 UAL MAY BE A SEXUALLY VIOLENT PREDATOR, WITHIN 3 MONTHS BEFORE
12 THE ANTICIPATED DATE OF THE INDIVIDUAL'S RELEASE FROM THE FACILI-
13 TY, THE AGENCY SHALL PROVIDE WRITTEN NOTIFICATION OF THE DATE OF
14 RELEASE TO THE ATTORNEY GENERAL AND THE MULTIDISCIPLINARY TEAM
15 ESTABLISHED IN SUBSECTION (3).

16 (2) THE AGENCY WITH JURISDICTION SHALL INFORM THE ATTORNEY
17 GENERAL AND THE MULTIDISCIPLINARY TEAM ESTABLISHED UNDER SUBSEC-
18 TION (3) OF ALL OF THE FOLLOWING:

19 (A) THE INDIVIDUAL'S NAME, IDENTIFYING FACTORS, ANTICIPATED
20 FUTURE RESIDENCE, AND OFFENSE HISTORY.

21 (B) DOCUMENTATION OF INSTITUTIONAL ADJUSTMENT AND ANY TREAT-
22 MENT RECEIVED.

23 (3) THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL
24 ESTABLISH A MULTIDISCIPLINARY TEAM, WHICH MAY INCLUDE INDIVIDUALS
25 FROM OTHER STATE AGENCIES, TO REVIEW AVAILABLE RECORDS OF EACH
26 INDIVIDUAL REFERRED TO THE TEAM UNDER SUBSECTION (1). WITHIN 30
27 DAYS OF RECEIVING NOTICE UNDER SUBSECTION (1), THE

1 MULTIDISCIPLINARY TEAM SHALL ASSESS WHETHER OR NOT THE INDIVIDUAL
2 MEETS THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR. THE TEAM
3 SHALL NOTIFY THE ATTORNEY GENERAL OF ITS ASSESSMENT.

4 (4) THE ATTORNEY GENERAL SHALL APPOINT A PROSECUTOR'S REVIEW
5 COMMITTEE TO REVIEW THE RECORDS OF EACH INDIVIDUAL REFERRED TO
6 THE ATTORNEY GENERAL UNDER SUBSECTION (1). THE PROSECUTOR'S
7 REVIEW COMMITTEE SHALL ASSIST THE ATTORNEY GENERAL IN THE DETER-
8 MINATION OF WHETHER OR NOT THE INDIVIDUAL MEETS THE DEFINITION OF
9 A SEXUALLY VIOLENT PREDATOR. THE ASSESSMENT OF THE MULTIDISCI-
10 PLINARY TEAM SHALL BE MADE AVAILABLE TO THE ATTORNEY GENERAL AND
11 THE PROSECUTOR'S REVIEW COMMITTEE.

12 (5) THE AGENCY WITH JURISDICTION AND ITS EMPLOYEES, MEMBERS
13 OF THE MULTIDISCIPLINARY TEAM, MEMBERS OF THE PROSECUTOR'S REVIEW
14 COMMITTEE, AND INDIVIDUALS CONTRACTING, APPOINTED, OR VOLUNTEER-
15 ING TO PERFORM SERVICES UNDER THIS CHAPTER ARE IMMUNE FROM
16 LIABILITY FOR GOOD FAITH ACTS IN COMPLIANCE WITH THIS SECTION.

17 SEC. 1062. WITHIN 75 DAYS OF THE DATE THE ATTORNEY GENERAL
18 RECEIVES NOTICE UNDER SECTION 1061(1), IF THE PROSECUTOR'S REVIEW
19 COMMITTEE APPOINTED IN SECTION 1061(4) HAS DETERMINED THAT THE
20 INDIVIDUAL MEETS THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR,
21 THE ATTORNEY GENERAL MAY FILE A PETITION ALLEGING THAT AN INDI-
22 VIDUAL IS A SEXUALLY VIOLENT PREDATOR AND STATING SUFFICIENT
23 FACTS TO SUPPORT THE ALLEGATION, IF 1 OR MORE OF THE FOLLOWING
24 CIRCUMSTANCES EXIST:

25 (A) THE INDIVIDUAL WAS CONVICTED OF A SEXUALLY VIOLENT
26 OFFENSE AND HIS OR HER SENTENCE IS ABOUT TO EXPIRE.

1 (B) THE INDIVIDUAL WAS CHARGED WITH A SEXUALLY VIOLENT
2 OFFENSE, HAS BEEN DETERMINED TO BE INCOMPETENT TO STAND TRIAL,
3 AND IS ABOUT TO BE RELEASED.

4 (C) THE INDIVIDUAL HAS BEEN FOUND NOT GUILTY BY REASON OF
5 INSANITY OF A SEXUALLY VIOLENT OFFENSE AND HE OR SHE IS ABOUT TO
6 BE RELEASED.

7 SEC. 1063. (1) UPON THE FILING OF A PETITION UNDER SECTION
8 1062, THE JUDGE SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
9 BELIEVE THAT THE INDIVIDUAL NAMED IN THE PETITION IS A SEXUALLY
10 VIOLENT PREDATOR. IF THE JUDGE DETERMINES THAT PROBABLE CAUSE
11 EXISTS, HE OR SHE SHALL ORDER THAT THE INDIVIDUAL BE TAKEN INTO
12 CUSTODY.

13 (2) WITHIN 72 HOURS AFTER AN INDIVIDUAL IS TAKEN INTO CUS-
14 TODY UNDER SUBSECTION (1), THE COURT SHALL PROVIDE THE INDIVIDUAL
15 WITH NOTICE OF, AND AN OPPORTUNITY TO APPEAR IN PERSON AT, A
16 HEARING TO CONTEST PROBABLE CAUSE AS TO WHETHER THE DETAINED
17 INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR. AT THE HEARING, THE
18 STATE MAY RELY UPON THE PETITION AND SUPPLEMENT IT WITH ADDI-
19 TIONAL DOCUMENTARY EVIDENCE OR LIVE TESTIMONY. THE COURT SHALL
20 DO BOTH OF THE FOLLOWING:

21 (A) VERIFY THE DETAINED INDIVIDUAL'S IDENTITY.

22 (B) DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT
23 THE INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR.

24 (3) AT THE PROBABLE CAUSE HEARING, THE DETAINED INDIVIDUAL
25 HAS THE FOLLOWING RIGHTS:

26 (A) TO BE REPRESENTED BY COUNSEL.

1 (B) TO PRESENT EVIDENCE ON HIS OR HER BEHALF.

2 (C) TO CROSS-EXAMINE WITNESSES WHO TESTIFY AGAINST HIM OR
3 HER.

4 (D) TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE COURT
5 FILE.

6 (4) IF THE COURT DETERMINES THAT PROBABLE CAUSE EXISTS THAT
7 THE INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR, THE COURT SHALL
8 ORDER THAT THE INDIVIDUAL BE TRANSFERRED TO THE CENTER FOR FOREN-
9 SIC PSYCHIATRY FOR AN EVALUATION AS TO WHETHER THE INDIVIDUAL IS
10 A SEXUALLY VIOLENT PREDATOR.

11 SEC. 1064. (1) NOT MORE THAN 60 DAYS AFTER THE COMPLETION
12 OF A HEARING UNDER SECTION 1063, THE COURT SHALL CONDUCT A TRIAL
13 TO DETERMINE WHETHER THE INDIVIDUAL IS A SEXUALLY VIOLENT
14 PREDATOR. THE INDIVIDUAL, THE ATTORNEY GENERAL, OR THE JUDGE HAS
15 THE RIGHT TO DEMAND THAT THE TRIAL BE BEFORE A JURY. IF NO JURY
16 DEMAND IS MADE, THE TRIAL SHALL BE BEFORE THE COURT. THE TRIAL
17 MAY BE CONTINUED UPON THE REQUEST OF EITHER PARTY AND A SHOWING
18 OF GOOD CAUSE, OR BY THE COURT ON ITS OWN MOTION IN THE DUE
19 ADMINISTRATION OF JUSTICE, AND IF THE RESPONDENT WILL NOT BE SUB-
20 STANTIALLY PREJUDICED.

21 (2) AT ALL STAGES OF THE PROCEEDINGS UNDER THIS CHAPTER, AN
22 INDIVIDUAL SUBJECT TO THIS CHAPTER IS ENTITLED TO THE ASSISTANCE
23 OF COUNSEL. IF THE INDIVIDUAL IS INDIGENT, THE COURT SHALL
24 APPOINT COUNSEL TO ASSIST HIM OR HER.

25 (3) IF AN INDIVIDUAL IS SUBJECTED TO AN EXAMINATION UNDER
26 THIS CHAPTER, HE OR SHE MAY RETAIN AN EXPERT OR PROFESSIONAL
27 PERSON OF HIS OR HER CHOICE TO PERFORM AN EXAMINATION ON HIS OR

1 HER BEHALF. THE SELECTED EXPERT OR PROFESSIONAL PERSON SHALL BE
2 PERMITTED TO HAVE REASONABLE ACCESS TO THE INDIVIDUAL FOR THE
3 PURPOSE OF THE EXAMINATION, AND TO ALL RELEVANT MEDICAL AND PSY-
4 CHOLOGICAL RECORDS AND REPORTS. IF THE INDIVIDUAL IS INDIGENT,
5 THE COURT SHALL, UPON THE INDIVIDUAL'S REQUEST, ASSIST THE INDI-
6 VIDUAL IN OBTAINING AN EXPERT OR PROFESSIONAL PERSON TO PERFORM
7 AN EXAMINATION OR PARTICIPATE IN THE TRIAL ON THE INDIVIDUAL'S
8 BEHALF.

9 SEC. 1065. (1) THE COURT OR JURY SHALL DETERMINE IN THE
10 PROCEEDINGS UNDER THIS CHAPTER WHETHER, BEYOND A REASONABLE
11 DOUBT, THE INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR. IF THE
12 STATE ALLEGES THAT THE PRIOR SEXUALLY VIOLENT OFFENSE THAT FORMS
13 THE BASIS FOR THE PETITION FOR COMMITMENT WAS AN ACT THAT WAS
14 SEXUALLY MOTIVATED AS PROVIDED IN SECTION 1060(D)(*vii*), THE STATE
15 SHALL PROVE BEYOND A REASONABLE DOUBT THAT THE ALLEGED ACT WAS
16 SEXUALLY MOTIVATED.

17 (2) IF THE COURT OR JURY DETERMINES THAT THE INDIVIDUAL IS A
18 SEXUALLY VIOLENT PREDATOR, THE INDIVIDUAL SHALL BE COMMITTED TO
19 THE CUSTODY OF THE DEPARTMENT IN A SECURE FACILITY FOR CONTROL,
20 CARE, AND TREATMENT UNTIL SUCH TIME AS THE INDIVIDUAL'S MENTAL
21 ABNORMALITY OR PERSONALITY DISORDER HAS SO CHANGED THAT IT IS
22 SAFE FOR THE INDIVIDUAL TO BE AT LARGE. THE CONTROL, CARE, AND
23 TREATMENT SHALL BE PROVIDED AT A FACILITY OPERATED BY THE
24 DEPARTMENT. THE FACILITY SHALL NOT BE LOCATED ON THE GROUNDS OF
25 A STATE MENTAL FACILITY OR REGIONAL HABILITATION CENTER UNLESS
26 THE DEPARTMENT OF CORRECTIONS CERTIFIES THAT THE FACILITY IS
27 SUFFICIENTLY SECURE FOR THIS POPULATION. THE INDIVIDUAL SHALL BE

1 SEGREGATED AT ALL TIMES FROM ANY OTHER PATIENT UNDER THE
2 SUPERVISION OF THE DEPARTMENT. THE INVOLUNTARY DETENTION OR COM-
3 MITMENT OF INDIVIDUALS UNDER THIS CHAPTER SHALL CONFORM TO CON-
4 STITUTIONAL REQUIREMENTS FOR CARE AND TREATMENT.

5 (3) IF THE COURT OR JURY IS NOT SATISFIED BEYOND A REASON-
6 ABLE DOUBT THAT THE INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR,
7 THE COURT SHALL ORDER THE INDIVIDUAL'S RELEASE.

8 (4) UPON A MISTRIAL, THE COURT SHALL ORDER THAT THE INDIVID-
9 UAL BE HELD AT AN APPROPRIATE SECURE FACILITY, INCLUDING, BUT NOT
10 LIMITED TO, A COUNTY JAIL, UNTIL ANOTHER TRIAL IS CONDUCTED. A
11 SUBSEQUENT TRIAL FOLLOWING A MISTRIAL SHALL BE HELD WITH 90 DAYS
12 OF THE PREVIOUS TRIAL, UNLESS THE SUBSEQUENT TRIAL IS CONTINUED
13 IN ACCORDANCE WITH SECTION 1065.

14 SEC. 1066. (1) IF THE INDIVIDUAL NAMED IN THE PETITION
15 FILED UNDER SECTION 1062 HAS BEEN FOUND INCOMPETENT TO STAND
16 TRIAL, AND IS ABOUT TO BE OR HAS BEEN RELEASED IN ACCORDANCE WITH
17 SECTION 1044, THE COURT SHALL FIRST HEAR EVIDENCE AND DETERMINE
18 WHETHER THE INDIVIDUAL COMMITTED THE ACT OR ACTS CHARGED IF THE
19 COURT DID NOT ENTER A FINDING PRIOR TO DISMISSAL UNDER SECTION
20 1044 THAT THE INDIVIDUAL COMMITTED THE ACT OR ACTS CHARGED. THE
21 HEARING ON THIS ISSUE SHALL COMPLY WITH ALL THE PROCEDURES SPECI-
22 FIED IN THIS CHAPTER. THE RULES OF EVIDENCE APPLICABLE IN CRIMI-
23 NAL CASES APPLY TO A TRIAL UNDER THIS SECTION, AND THE INDIVIDUAL
24 HAS ALL CONSTITUTIONAL RIGHTS AVAILABLE TO DEFENDANTS AT CRIMINAL
25 TRIALS, OTHER THAN THE RIGHT NOT TO BE TRIED WHILE INCOMPETENT.

26 (2) AFTER HEARING EVIDENCE ON THE ISSUE, THE COURT SHALL
27 MAKE SPECIFIC FINDINGS ON WHETHER THE INDIVIDUAL COMMITTED THE

1 ACT OR ACTS CHARGED, THE EXTENT TO WHICH THE INDIVIDUAL'S
2 INCOMPETENCE OR DEVELOPMENTAL DISABILITY AFFECTED THE OUTCOME OF
3 THE HEARING, INCLUDING ITS EFFECT ON THE INDIVIDUAL'S ABILITY TO
4 CONSULT WITH AND ASSIST COUNSEL AND TO TESTIFY IN HIS OR HER OWN
5 BEHALF, THE EXTENT TO WHICH THE EVIDENCE COULD BE RECONSTRUCTED
6 WITHOUT THE ASSISTANCE OF THE INDIVIDUAL, AND THE STRENGTH OF THE
7 PROSECUTION'S CASE. IF, AFTER THE CONCLUSION OF THE HEARING ON
8 THIS ISSUE, THE COURT FINDS, BEYOND A REASONABLE DOUBT, THAT THE
9 INDIVIDUAL COMMITTED THE ACT OR ACTS CHARGED, THE COURT SHALL
10 ENTER A FINAL ORDER, APPEALABLE BY THE INDIVIDUAL, ON THAT ISSUE,
11 AND MAY PROCEED TO CONSIDER WHETHER THE INDIVIDUAL SHOULD BE COM-
12 MITTED UNDER SECTION 1065.

13 SEC. 1067. (1) AN INDIVIDUAL COMMITTED UNDER THIS CHAPTER
14 SHALL BE EXAMINED AT LEAST ONCE EACH YEAR. THE INDIVIDUAL MAY
15 RETAIN OR, IF HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT
16 MAY APPOINT A QUALIFIED EXPERT OR OTHER PROFESSIONAL PERSON TO
17 EXAMINE HIM OR HER. THE EXPERT OR PROFESSIONAL PERSON SHALL HAVE
18 ACCESS TO ALL RECORDS CONCERNING THE INDIVIDUAL. THE DEPARTMENT
19 SHALL PROVIDE AN ANNUAL REPORT TO THE COURT THAT COMMITTED THE
20 INDIVIDUAL UNDER THIS CHAPTER.

21 (2) THE COURT SHALL CONDUCT AN ANNUAL REVIEW OF THE STATUS
22 OF THE COMMITTED INDIVIDUAL.

23 (3) THE INDIVIDUAL MAY PETITION THE COURT FOR DISCHARGE AT
24 ANY HEARING HELD UNDER THIS SECTION.

25 SEC. 1068. (1) IF THE DIRECTOR OF THE DEPARTMENT OR THE
26 DIRECTOR OF THE FACILITY IN WHICH THE INDIVIDUAL HAS BEEN
27 COMMITTED DETERMINES THAT THE INDIVIDUAL'S MENTAL ABNORMALITY HAS

1 CHANGED SO THAT THE INDIVIDUAL IS NOT LIKELY TO COMMIT SEXUALLY
2 VIOLENT OFFENSES IF RELEASED, THE DIRECTOR OF THE DEPARTMENT OR
3 THE DIRECTOR OF THE FACILITY SHALL AUTHORIZE THE INDIVIDUAL TO
4 PETITION THE COURT FOR RELEASE. THE PETITION SHALL BE SERVED
5 UPON THE COURT AND THE ATTORNEY GENERAL.

6 (2) UPON RECEIPT OF A PETITION FOR RELEASE, THE COURT SHALL
7 ORDER A HEARING TO BE HELD WITHIN 30 DAYS OF THE RECEIPT. THE
8 ATTORNEY GENERAL SHALL REPRESENT THE STATE AND SHALL HAVE THE
9 RIGHT TO HAVE THE PETITIONER EXAMINED BY AN EXPERT OR PROFES-
10 SIONAL PERSON OF THE ATTORNEY GENERAL'S CHOICE.

11 (3) THE HEARING HELD UNDER SUBSECTION (2) SHALL BE BEFORE A
12 JURY IF DEMANDED BY EITHER THE PETITIONER OR THE ATTORNEY
13 GENERAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING
14 BEYOND A REASONABLE DOUBT THAT THE PETITIONER'S MENTAL ABNORMAL-
15 ITY OR PERSONALITY DISORDER REMAINS SO THAT THE PETITIONER IS NOT
16 SAFE TO BE AT LARGE AND THAT IF DISCHARGED IS LIKELY TO COMMIT
17 SEXUALLY VIOLENT OFFENSES.

18 SEC. 1069. (1) NOTWITHSTANDING SECTION 1068, AN INDIVIDUAL
19 MAY PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
20 DIRECTOR OF THE DEPARTMENT OR THE DIRECTOR OF THE FACILITY. THE
21 DIRECTOR OF THE DEPARTMENT SHALL PROVIDE THE COMMITTED INDIVIDUAL
22 WITH AN ANNUAL WRITTEN NOTICE OF THE INDIVIDUAL'S RIGHT TO PETI-
23 TION THE COURT FOR RELEASE OVER THE DEPARTMENT DIRECTOR'S OR
24 FACILITY DIRECTOR'S OBJECTION. THE NOTICE SHALL CONTAIN A WAIVER
25 OF RIGHTS. THE DIRECTOR OF THE DEPARTMENT SHALL FORWARD THE
26 NOTICE AND WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT
27 REQUIRED UNDER SECTION 1067.

1 (2) IF THE INDIVIDUAL DOES NOT AFFIRMATIVELY WAIVE THE RIGHT
2 TO PETITION, THE COURT SHALL SET A SHOW CAUSE HEARING TO DETER-
3 MINE WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
4 INDIVIDUAL'S CONDITION HAS SO CHANGED THAT IT IS SAFE FOR THE
5 INDIVIDUAL TO BE AT LARGE. THE COMMITTED INDIVIDUAL HAS A RIGHT
6 TO HAVE AN ATTORNEY REPRESENT HIM OR HER AT THE SHOW CAUSE HEAR-
7 ING BUT 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 INDIVIDUAL'S MENTAL ABNORMALITY
10 HAS SO CHANGED THAT IT IS SAFE FOR THE INDIVIDUAL TO BE AT LARGE
11 AND WILL NOT ENGAGE IN SEXUALLY VIOLENT OFFENSES IF DISCHARGED,
12 THEN THE COURT SHALL SET A HEARING ON THE ISSUE. THE COMMITTED
13 INDIVIDUAL IS ENTITLED TO BE PRESENT AT THE HEARING AND TO HAVE
14 THE BENEFIT OF ALL CONSTITUTIONAL PROTECTIONS THAT WERE AFFORDED
15 TO HIM OR HER AT THE INITIAL COMMITMENT PROCEEDING. THE ATTORNEY
16 GENERAL SHALL REPRESENT THE STATE AND SHALL HAVE A RIGHT TO A
17 JURY TRIAL AND TO HAVE THE COMMITTED INDIVIDUAL EVALUATED BY
18 EXPERTS CHOSEN BY THE STATE. THE COMMITTED INDIVIDUAL ALSO HAS
19 THE RIGHT TO HAVE EXPERTS EVALUATE HIM OR HER ON HIS OR HER
20 BEHALF AND THE COURT SHALL APPOINT AN EXPERT IF THE INDIVIDUAL IS
21 INDIGENT AND REQUESTS AN APPOINTMENT. THE ATTORNEY FOR THE STATE
22 HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE COM-
23 MITTED INDIVIDUAL'S MENTAL ABNORMALITY HAS NOT CHANGED AND THAT
24 IT IS NOT SAFE FOR THE INDIVIDUAL TO BE AT LARGE AND IF RELEASED,
25 THE INDIVIDUAL WILL ENGAGE IN SEXUALLY VIOLENT OFFENSES.

26 SEC. 1070. NOTHING IN THIS CHAPTER PROHIBITS AN INDIVIDUAL
27 FROM FILING A PETITION FOR DISCHARGE IN ACCORDANCE WITH THIS

1 CHAPTER. IF AN INDIVIDUAL HAS PREVIOUSLY FILED A PETITION FOR
2 DISCHARGE WITHOUT THE DEPARTMENT DIRECTOR'S OR FACILITY
3 DIRECTOR'S APPROVAL AND THE COURT DETERMINED, EITHER UPON REVIEW
4 OF THE PETITION OR FOLLOWING A HEARING, THAT THE PETITIONER'S
5 PETITION WAS FRIVOLOUS OR THAT THE PETITIONER'S CONDITION HAD NOT
6 SO CHANGED SO THAT IT IS SAFE FOR THE INDIVIDUAL TO BE AT LARGE,
7 THEN THE COURT SHALL DENY THE SUBSEQUENT PETITION UNLESS THE
8 PETITION CONTAINS FACTS UPON WHICH A COURT COULD FIND THAT THE
9 CONDITION OF THE PETITIONER HAD SO CHANGED THAT A HEARING WAS
10 WARRANTED. UPON RECEIPT OF A FIRST OR SUBSEQUENT PETITION FROM A
11 COMMITTED INDIVIDUAL WITHOUT THE DEPARTMENT DIRECTOR'S OR FACIL-
12 ITY DIRECTOR'S APPROVAL, THE COURT SHALL REVIEW THE PETITION AND
13 DETERMINE IF THE PETITION IS BASED UPON FRIVOLOUS GROUNDS AND IF
14 SO SHALL DENY THE PETITION WITHOUT A HEARING.

15 SEC. 1071. THE DEPARTMENT IS RESPONSIBLE FOR ALL COSTS
16 RELATED TO THE EVALUATION AND TREATMENT OF INDIVIDUALS COMMITTED
17 TO ITS CUSTODY UNDER A PROVISION OF THIS CHAPTER. THE DEPARTMENT
18 MAY OBTAIN REIMBURSEMENT IN ACCORDANCE WITH CHAPTER 8 FOR THE
19 COST AND CARE OF TREATMENT OF INDIVIDUALS COMMITTED TO ITS
20 CUSTODY.

21 SEC. 1072. (1) IN ADDITION TO OTHER INFORMATION REQUIRED TO
22 BE RELEASED UNDER THIS CHAPTER, THE DEPARTMENT SHALL RELEASE REL-
23 EVANT INFORMATION THAT IS NECESSARY TO PROTECT THE PUBLIC CON-
24 CERNING A SPECIFIC SEXUALLY VIOLENT PREDATOR COMMITTED UNDER THIS
25 CHAPTER.

26 (2) BEFORE RELEASING AN INDIVIDUAL COMMITTED UNDER THIS
27 CHAPTER, THE DEPARTMENT SHALL GIVE WRITTEN NOTICE OF THE RELEASE

1 TO ANY VICTIM OF THE INDIVIDUAL'S ACTIVITIES OR CRIME WHO IS
2 ALIVE AND WHOSE ADDRESS IS KNOWN TO THE DEPARTMENT. IF THE
3 VICTIM IS DECEASED, WRITTEN NOTICE SHALL BE GIVEN TO THE VICTIM'S
4 FAMILY IF THE FAMILY'S ADDRESS IS KNOWN TO THE DEPARTMENT.
5 FAILURE TO NOTIFY IS NOT A REASON FOR POSTPONEMENT OF RELEASE.

6 (3) THIS SECTION DOES NOT CREATE A CAUSE OF ACTION AGAINST
7 THE STATE OR AN EMPLOYEE OF THE STATE ACTING WITHIN THE SCOPE OF
8 HIS OR HER EMPLOYMENT AS A RESULT OF THE FAILURE TO NOTIFY IN
9 ACCORDANCE WITH THIS SECTION.

10 SEC. 1073. (1) THE PROSECUTING ATTORNEY SHALL FILE A SPE-
11 CIAL ALLEGATION OF SEXUAL MOTIVATION WITHIN 10 DAYS AFTER
12 ARRAIGNMENT IN EVERY CRIMINAL CASE OTHER THAN SEX OFFENSES
13 DESCRIBED IN SECTION 1060(E)(i) TO (vi) IF SUFFICIENT ADMISSIBLE
14 EVIDENCE EXISTS THAT, WHEN CONSIDERED WITH THE MOST PLAUSIBLE,
15 REASONABLY FORESEEABLE DEFENSE THAT COULD BE RAISED UNDER THE
16 EVIDENCE, WOULD JUSTIFY A FINDING OF SEXUAL MOTIVATION BY A REA-
17 SONABLE AND OBJECTIVE FACT FINDER.

18 (2) IN A CRIMINAL CASE IN WHICH A SPECIAL ALLEGATION HAS
19 BEEN FILED UNDER SUBSECTION (1), THE STATE HAS THE BURDEN OF
20 PROVING BEYOND A REASONABLE DOUBT THAT THE ACCUSED COMMITTED THE
21 CRIME WITH A SEXUAL MOTIVATION. THE COURT SHALL MAKE A FINDING
22 OF FACT OF WHETHER OR NOT A SEXUAL MOTIVATION WAS PRESENT AT THE
23 TIME OF THE COMMISSION OF THE CRIME. IF THE TRIAL IS BY JURY,
24 THE JURY, IF IT FINDS THE DEFENDANT GUILTY, SHALL ALSO FIND A
25 SPECIAL VERDICT AS TO WHETHER OR NOT THE DEFENDANT COMMITTED THE
26 CRIME WITH A SEXUAL MOTIVATION. THE FINDING REQUIRED UNDER THIS

1 SUBSECTION DOES NOT APPLY TO SEX OFFENSES AS DESCRIBED IN SECTION
2 1060(E)(i) TO (vi).

3 (3) THE PROSECUTING ATTORNEY SHALL NOT WITHDRAW THE SPECIAL
4 ALLEGATION OF SEXUAL MOTIVATION WITHOUT APPROVAL OF THE COURT
5 THROUGH AN ORDER OF DISMISSAL OF THE SPECIAL ALLEGATION. THE
6 COURT SHALL NOT DISMISS THE SPECIAL ALLEGATION UNLESS IT FINDS
7 THAT AN ORDER OF DISMISSAL IS NECESSARY TO CORRECT AN ERROR IN
8 THE INITIAL CHARGING DECISION OR UNLESS THERE ARE EVIDENTIARY
9 PROBLEMS THAT MAKE PROVING THE SPECIAL ALLEGATION DOUBTFUL.

10 SEC. 1074. ANY PSYCHOLOGICAL REPORTS, DRUG AND ALCOHOL
11 REPORTS, TREATMENT RECORDS, REPORTS OF THE CENTER FOR FORENSIC
12 PSYCHIATRY, MEDICAL RECORDS, OR VICTIM IMPACT STATEMENTS THAT
13 HAVE BEEN SUBMITTED TO THE COURT OR ADMITTED INTO EVIDENCE UNDER
14 THIS CHAPTER SHALL BE PART OF THE RECORD BUT SHALL BE SEALED AND
15 OPENED ONLY AS ORDERED BY THE COURT OR AS PROVIDED IN THIS
16 CHAPTER.