

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 96 (as introduced 1-26-99)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 4-27-99

CONTENT

The bill would amend the Mental Health Code to establish procedures for the civil commitment of a violent predator, after he or she had served a criminal sentence. The bill would do all of the following:

- **Require the Department of Corrections (DOC) to notify the Attorney General and each victim requesting notification when a violent offender who could be a "violent predator" under the bill was within six months of release from incarceration.**
- **Require a trial to determine whether a person was a violent predator.**
- **Provide for the commitment of a person determined to be a violent predator.**
- **Establish provisions for the filing and review of a petition for discharge.**
- **Include legislative findings regarding the existence, danger, and treatment needs of violent predators.**

Definitions

"Violent predator" would mean an individual who had been convicted of a "violent offense"; had committed two or more murders or voluntary manslaughters separate from and not arising out of the incident or incidents that were the basis for the violent offense, as evidenced by certified copies of the court records of convictions in this State, another state, Federal court, or a foreign country; and suffered from a "mental abnormality" that made him or her likely to engage in future "predatory acts" of violence.

"Violent offense" would mean any of the following:

- Assault with intent to commit murder (MCL 750.83).
- Attempted murder, solicitation to commit murder, first-degree murder, or second-degree murder (MCL 750.91, 750.157b(2), 750.316, & 750.317).
- Poisoning another person with an amount sufficient to cause death (MCL 750.436(2)).
- First-degree criminal sexual conduct (CSC) (MCL 750.520b).

Violent offense also would include a felony under Federal law or the law of another state substantially corresponding to one of those offenses.

"Mental abnormality" would mean a congenital or acquired condition that affected an individual's emotional or volitional capacity and predisposed him or her to commit violent offenses to a degree that rendered the person a menace to the health and safety of others.

"Predatory act" would mean an act directed toward an individual for the primary purpose of victimization.

Notice and Petition

If the DOC had jurisdiction over a person who was convicted of a violent offense, and determined that the person could be a violent predator, the DOC, within six months before the anticipated date of the expiration of the person's maximum sentence and anticipated release date, would have to provide written notification of the date of release to the Attorney General and to each victim who had requested notification of any change in the person's status under the Crime Victim's Rights Act. If the DOC or a DOC employee in good faith made a

determination or gave notice in compliance with these provisions, the DOC or employee would not be liable in a civil action for damages based on the determination or notice.

The Attorney General could file a petition alleging that the person was a violent predator and stating sufficient facts to support the allegation, if the person were convicted of a violent offense on or after January 1, 2001, and his or her sentence were about to expire, or had expired; and had committed two or more murders or voluntary manslaughters that were separate from and did not arise out of the incident or incidents that were the basis for the violent offense, as evidenced by certified copies of the court records of convictions in this State, another state, Federal court, or a foreign country. The petition would have to be filed with the court in this State that convicted the person of the violent offense.

Upon the filing of a petition, the court would have to determine whether there was probable cause to believe that the person named in the petition was a violent predator. If the court determined that probable cause existed, the court would have to order that the person be evaluated by the Center for Forensic Psychiatry to determine whether he or she was a violent predator. The DOC would have to accept the person back after the evaluation. The person could not be released before trial. If the person's maximum sentence would expire and he or she would be released before the trial was completed, the court would have to order the person to be confined in a secure facility.

Trial/Commitment

Within 45 days after a petition was filed, the court would have to conduct a trial to determine whether the person was a violent predator. The person alleged to be a violent predator, the Attorney General, or the court would have the right to demand a jury trial. If no jury were demanded, the trial would be before the court. At all stages of the proceedings, an individual subject to the bill would be entitled to the assistance of counsel. If the person were indigent, the court would have to appoint counsel to assist him or her.

If a person alleged to be a violent predator were subjected to an examination under the bill, he or she could retain an expert or professional person of his or her choice to perform an examination on his or her behalf. The selected expert or professional could have reasonable access to the person for the purpose of the examination, and to all relevant medical and psychological records and reports. If the person were indigent, the court, upon his or her request, would have to appoint a qualified expert or professional person to perform an examination or participate in the trial on the person's behalf.

In a trial conducted under the bill, the court or jury would have to determine whether, beyond a reasonable doubt, the person was a violent predator. If the court or jury were not satisfied beyond a reasonable doubt that the person was a violent predator, the court would have to order his or her release.

If the court or jury determined that the person was a violent predator, he or she would have to be committed to the custody of the Department of Community Health (DCH) in a secure facility for control and treatment until the person's mental abnormality had changed so that he or she was safe to be discharged and the court granted his or her petition for discharge. The control and treatment would have to be provided at a facility managed by, or under contract to, the DCH. The facility could not be located on the grounds of a State psychiatric hospital or regional center for developmental disabilities unless the DOC and the DCH certified that the facility was sufficiently appropriate and secure for that person.

A person committed under the bill would have to be examined at least once every three years. The person could retain a qualified expert or other professional person to examine him or her. If the person were indigent and requested it, the court could appoint a qualified expert or other professional to conduct the examination. The expert or professional would have access to all pertinent records concerning the person. The DCH would have to provide an annual report to the court.

Petition for Discharge

If the DCH Director determined that the person's mental abnormality had so changed that he or she was not likely to engage in future predatory acts if released, the DCH Director would have to authorize the person to petition the court for discharge. The petition would have to be served upon the court and the Attorney General. The Attorney General would have to notify each victim who was required to be notified by the DOC under the

Crime Victim's Rights Act.

Upon receiving a petition for discharge, the court would have to order a hearing to be held within 45 days. The Attorney General would have to represent the State and would have the right to have the petitioner examined by an expert or professional person of his or her choice.

A hearing on a petition for release would have to be before a jury, if demanded by either the petitioner or the Attorney General. The Attorney General would have the burden of proving beyond a reasonable doubt that the petitioner's mental abnormality remained so that the petitioner was not safe to be discharged and that, if discharged, would be likely to commit one or more future predatory acts of violence.

A person also could petition the court for discharge not more than once every 12 months, without the approval of the DCH Director. The DCH Director would have to give the committed person an annual written notice of his or her right to petition the court for release without the Director's approval. The notice would have to contain a waiver of rights. The DCH Director would have to forward the notice and waiver form to the court with the annual report required under the bill.

If a committed person petitioned for discharge without the Director's approval, the court would have to set a show cause hearing to determine whether there were facts that warranted a hearing on whether the person's condition had so changed that he or she was safe to be discharged. The committed person would have a right to legal representation at the show cause hearing, but would not be entitled to be present at that hearing. If the court determined at the show cause hearing that there was probable cause to believe that the person's mental abnormality had so changed that the person was safe to be discharged and would not engage in future predatory acts of violence if discharged, the court would have to set a hearing on the issue. The committed individual would be entitled to be present at that hearing and to have the benefit of all constitutional protections afforded to him or her at the initial commitment proceeding.

The Attorney General would have to represent the State and would have the right to a jury trial and to have the committed person evaluated by experts chosen by the State. The committed person also would have the right to have experts evaluate him or her on his or her behalf. The court would have to appoint an expert if the person were indigent and requested an appointment. The Attorney General would have the burden of proving beyond a reasonable doubt that the committed person's mental abnormality had not changed, that the person was not safe to be discharged, and that, if released, the person would engage in one or more future predatory acts of violence.

The bill states that nothing in it would prohibit a person from filing a petition for discharge. If a person had previously filed a petition without the approval of the DCH Director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the petitioner's condition had not changed sufficiently for him or her to be discharged, the court would have to deny a subsequent petition unless it contained facts upon which a court could find that the condition of the petitioner had so changed that a hearing was warranted. Upon receiving a first or subsequent petition from a committed person without the approval of the DCH Director or the director of the facility managed by the DCH, the court would have to review the petition and determine if it was based on frivolous grounds and, if so, would have to deny the petition without a hearing.

Legislative Findings/Intent

The bill states the following findings of the Legislature: "The legislature finds that a small but extremely dangerous group of violent predators exists who do not have a mental illness that renders them appropriate for the existing civil commitment process that is designed to provide treatment to individuals with serious mental illness. The legislature also finds that the likelihood of a violent predator engaging in repeat acts of predatory violence is high. The legislature also finds that the prognosis for curing this small group of violent predators is poor, that the treatment needs of the population are very long-term, and that the treatment modalities for this population are very different from the traditional treatment modalities for individuals who are appropriate for commitment and treatment under this code."

The bill states that, "It is the intent of the legislature to separate and preserve the funds appropriated for the treatment of individuals under the other chapters of this code from the funds appropriated for the administration of..." the bill.

FISCAL IMPACT

It is difficult to estimate exactly how many individuals would be declared "violent predators" under this bill. It is easier to estimate the cost per each individual who was so declared: The average cost of treatment at the Center for Forensic Psychiatry is \$15,000 per person per year (Gross and GF/GP).

Thus, for each person determined to be a violent predator, there would be a \$15,000 cost. The annual cost to the State, once the bill was fully in effect, would be \$15,000 multiplied by the number convicted per year multiplied by the average length of time held in the secure facility. Thus, if 10 people were determined to be violent predators and the average length of stay were 10 years, the eventual annual cost would be \$1,500,000 gross and GF/GP, as the eventual "caseload" at any one time would be 100.

If the number held at any one time were significantly more than 100, it is likely that a new facility would have to be constructed. A typical 200-bed high security facility would cost approximately \$40 million in one-time capital outlay costs.

Other provisions of the bill also would impose costs, but these costs are insignificant compared with the cost of treatment in a secure facility.

The bill would have no fiscal impact on local government.

Fiscal Analyst: S. Angelotti