

# SENATE BILL No. 328

March 14, 2001, Introduced by Senator JAYE and referred to the Committee on Judiciary.

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:**

CHAPTER 10A

SEC. 1060. AS USED IN THIS CHAPTER:

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

(B) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CONDITION AFFECTING AN INDIVIDUAL'S EMOTIONAL OR VOLITIONAL CAPACITY THAT PREDISPOSES THE INDIVIDUAL TO COMMIT SEXUALLY VIOLENT OFFENSES TO A DEGREE THAT RENDERS THE INDIVIDUAL A MENACE TO THE 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, 2002:

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

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

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

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

21 (v) ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT,  
22 AS DESCRIBED IN SECTION 520G OF THE MICHIGAN PENAL CODE, 1931  
23 PA 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 A 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 OF ALL OF THE FOLLOWING:

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

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

22           (3) THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL  
23 ESTABLISH A MULTIDISCIPLINARY TEAM, WHICH MAY INCLUDE INDIVIDUALS  
24 FROM OTHER STATE AGENCIES, TO REVIEW AVAILABLE RECORDS OF EACH  
25 INDIVIDUAL REFERRED TO THE TEAM UNDER SUBSECTION (1). WITHIN 30  
26 DAYS AFTER RECEIVING NOTICE UNDER SUBSECTION (1), THE  
27 MULTIDISCIPLINARY TEAM SHALL ASSESS WHETHER OR NOT THE INDIVIDUAL

1 MEETS THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR. THE TEAM  
2 SHALL NOTIFY THE ATTORNEY GENERAL OF ITS ASSESSMENT.

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

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

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

24 (A) THE INDIVIDUAL WAS CONVICTED OF A SEXUALLY VIOLENT  
25 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 COURT 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 STANTIALY 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, THE STATE SHALL PROVE BEYOND A REASONABLE  
15 DOUBT THAT THE ALLEGED ACT WAS SEXUALLY MOTIVATED.

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

1 INVOLUNTARY DETENTION OR COMMITMENT OF INDIVIDUALS UNDER THIS  
2 CHAPTER SHALL CONFORM TO CONSTITUTIONAL REQUIREMENTS FOR CARE AND  
3 TREATMENT.

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

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

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

25 (2) AFTER HEARING EVIDENCE ON THE ISSUE, THE COURT SHALL  
26 MAKE SPECIFIC FINDINGS ON WHETHER THE INDIVIDUAL COMMITTED THE  
27 ACT CHARGED, THE EXTENT TO WHICH THE INDIVIDUAL'S INCOMPETENCE OR



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

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

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

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

24 SEC. 1068. (1) IF THE DIRECTOR OF THE DEPARTMENT OR THE  
25 DIRECTOR OF THE FACILITY WHERE THE INDIVIDUAL HAS BEEN COMMITTED  
26 DETERMINES THAT THE INDIVIDUAL'S MENTAL ABNORMALITY HAS CHANGED  
27 SO THAT THE INDIVIDUAL IS NOT LIKELY TO COMMIT SEXUALLY VIOLENT

1 OFFENSES IF RELEASED, THE DIRECTOR OF THE DEPARTMENT OR THE  
2 DIRECTOR OF THE FACILITY SHALL AUTHORIZE THE INDIVIDUAL TO PETI-  
3 TION THE COURT FOR RELEASE. THE PETITION SHALL BE SERVED UPON  
4 THE COURT AND THE ATTORNEY GENERAL.

5 (2) THE COURT SHALL ORDER A HEARING TO BE HELD WITHIN 30  
6 DAYS AFTER THE COURT RECEIVES A PETITION FOR RELEASE. THE ATTOR-  
7 NEY GENERAL SHALL REPRESENT THE STATE AND HAS THE RIGHT TO HAVE  
8 THE PETITIONER EXAMINED BY AN EXPERT OR PROFESSIONAL PERSON OF  
9 THE ATTORNEY GENERAL'S CHOICE.

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

17 SEC. 1069. (1) NOTWITHSTANDING SECTION 1068, AN INDIVIDUAL  
18 MAY 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 INDIVIDUAL  
21 WITH AN ANNUAL WRITTEN NOTICE OF THE INDIVIDUAL'S RIGHT TO PETI-  
22 TION THE COURT FOR RELEASE OVER THE DEPARTMENT DIRECTOR'S OR  
23 FACILITY DIRECTOR'S OBJECTION. THE NOTICE SHALL CONTAIN A WAIVER  
24 OF THE RIGHT TO PETITION. THE DIRECTOR OF THE DEPARTMENT SHALL  
25 FORWARD THE NOTICE AND WAIVER FORM TO THE COURT WITH THE ANNUAL  
26 REPORT 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  
3 DETERMINE WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER  
4 THE 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 HAS THE  
14 BENEFIT OF ALL CONSTITUTIONAL PROTECTIONS THAT WERE AFFORDED TO  
15 HIM OR HER AT THE INITIAL COMMITMENT PROCEEDING. THE ATTORNEY  
16 GENERAL SHALL REPRESENT THE STATE AND HAS A RIGHT TO DEMAND A  
17 JURY TRIAL AND TO HAVE THE COMMITTED INDIVIDUAL EVALUATED BY  
18 EXPERTS CHOSEN BY THE STATE. THE COMMITTED INDIVIDUAL HAS THE  
19 RIGHT TO HAVE AN EXPERT EVALUATE HIM OR HER ON HIS OR HER  
20 BEHALF. 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 THE COURT SHALL DENY THE SUBSEQUENT PETITION UNLESS THE PETITION  
8 CONTAINS FACTS UPON WHICH A COURT COULD FIND THAT THE CONDITION  
9 OF THE PETITIONER HAD SO CHANGED THAT A HEARING WAS WARRANTED.  
10 UPON RECEIPT OF A FIRST OR SUBSEQUENT PETITION FROM A COMMITTED  
11 INDIVIDUAL WITHOUT THE DEPARTMENT DIRECTOR'S OR FACILITY  
12 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 PROSECUTION FOR A  
13 SEXUALLY VIOLENT OFFENSE IF SUFFICIENT ADMISSIBLE EVIDENCE EXISTS  
14 THAT, WHEN CONSIDERED WITH THE MOST PLAUSIBLE, REASONABLY FORE-  
15 SEEABLE DEFENSE THAT COULD BE RAISED UNDER THE EVIDENCE, WOULD  
16 JUSTIFY A FINDING OF SEXUAL MOTIVATION BY A REASONABLE AND OBJEC-  
17 TIVE 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  
27 SUBSECTION DOES NOT APPLY TO A SEXUALLY VIOLENT OFFENSE.

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

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