

HOUSE BILL 26

Unofficial Copy
J1

1998 Regular Session
8lr0225
CF 8lr0387

(PRE-FILED)

By: **Delegates M. Burns and Hecht**

Requested: August 12, 1997

Introduced and read first time: January 14, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Sexually Violent Predator Act of 1998**

3 FOR the purpose of creating a procedure in which a person who has been convicted of
4 or charged with a sexually violent offense and who suffers from a certain mental
5 abnormality or personality disorder may be placed in the custody of the
6 Secretary of the Department of Health and Mental Hygiene until the person is
7 safe to be at large; requiring the Commissioner of the Division of Probation to
8 give notice to the Attorney General before certain persons who have been
9 convicted of certain sexually violent offenses are released from confinement;
10 requiring the Attorney General to determine if certain persons meet the criteria
11 of Title 10 sexually violent predators; requiring that a prosecutor's review
12 committee and a multidisciplinary team be formed to make recommendations
13 concerning the identification of Title 10 sexually violent predators; making the
14 Commissioner and certain other individuals immune from civil liability for acts
15 performed in good faith in carrying out this Act; specifying the criteria for Title
16 10 sexually violent predators; authorizing the Attorney General to petition the
17 circuit court to find probable cause that a certain person is a Title 10 sexually
18 violent predator; authorizing a court to conduct a trial under certain
19 circumstances to determine if a defendant is a Title 10 sexually violent predator;
20 allowing a defendant certain rights at trial; requiring that the standard of proof
21 at a trial to determine whether a person is a Title 10 sexually violent predator be
22 that of proof beyond a reasonable doubt; requiring that a person who is found to
23 be a Title 10 sexually violent predator be placed in the custody of the Secretary
24 of the Department of Health and Mental Hygiene for control, care, and
25 treatment at a State facility until the person's mental abnormality or
26 personality disorder has so changed that the person is safe to be at large;
27 requiring that a certain committed person in a State facility be subject to an
28 annual mental examination and an annual status review hearing; authorizing
29 the court to determine at an annual status review hearing that probable cause
30 exists to believe that the committed person is safe to be at large and will not
31 engage in acts of sexual violence if discharged; authorizing that a release
32 hearing be held under certain circumstances; requiring that the court release a
33 committed person under certain circumstances; providing that this Act have no
34 effect on the operation of certain provisions of the Code; requiring that victims

1 and designated family members of certain victims be given certain rights at
2 certain hearings and trials; defining certain terms; and generally relating to
3 Title 10 sexually violent predators.

4 BY adding to
5 Article 27 - Crimes and Punishments
6 Section 789A
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 1997 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article 27 - Crimes and Punishments
11 Section 792(a)(1)
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1997 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article 27 - Crimes and Punishments
16 Section 792(a)(7) and (8)
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1997 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article - Health - General
21 Section 1-101(a), (c), and (i) and 10-101(e) and (h)
22 Annotated Code of Maryland
23 (1994 Replacement Volume and 1997 Supplement)

24 BY adding to
25 Article - Health - General
26 Section 10-634 through 10-645, inclusive, to be under the new part "Part VI.
27 Sexually Violent Predators"
28 Annotated Code of Maryland
29 (1994 Replacement Volume and 1997 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article 27 - Crimes and Punishments**

33 789A.

34 IF A PERSON HAS BEEN PLACED IN THE CUSTODY OF THE SECRETARY OF THE
35 DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 10-641 OF THE HEALTH -
36 GENERAL ARTICLE AS A TITLE 10 SEXUALLY VIOLENT PREDATOR, AND A VICTIM OF A

1 SEXUALLY VIOLENT CRIME COMMITTED BY THE TITLE 10 SEXUALLY VIOLENT
 2 PREDATOR MAKES A WRITTEN REQUEST TO THE ATTORNEY GENERAL FOR
 3 NOTIFICATION, THE VICTIM HAS THE RIGHTS PROVIDED UNDER § 10-644 OF THE
 4 HEALTH - GENERAL ARTICLE.

5 792.

6 (a) (1) In this section the following words have the meanings indicated.

7 (7) "Registrant" means a person who is:

8 (i) A child sexual offender;

9 (ii) An offender;

10 (iii) A sexually violent offender; [or]

11 (iv) A sexually violent predator; OR

12 (v) A COMMITTED PERSON UNDER TITLE 10, SUBTITLE 6, PART VI
 13 OF THE HEALTH - GENERAL ARTICLE WHO IS RELEASED FROM CUSTODY OF THE
 14 SECRETARY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

15 (8) (i) "Release" means any type of release from the custody of a
 16 supervising authority.

17 (ii) "Release" includes:

18 1. [release] RELEASE on parole, mandatory supervision,
 19 work release, and any type of temporary leave other than leave that is granted on an
 20 emergency basis; AND

21 2. RELEASE FROM THE CUSTODY OF THE SECRETARY OF
 22 THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

23 (iii) "Release" does not include an escape.

24 **Article - Health - General**

25 1-101.

26 (a) In this article the following words have the meanings indicated.

27 (c) "Department" means the Department of Health and Mental Hygiene.

28 (i) "Secretary" means the Secretary of Health and Mental Hygiene.

1 10-101.

2 (e) (1) Except as otherwise provided in this title, "facility" means any public
3 or private clinic, hospital, or other institution that provides or purports to provide
4 treatment or other services for individuals who have mental disorders.

5 (2) "Facility" does not include a Veterans' Administration Hospital.

6 (h) "State facility" means a facility that is owned or operated by the
7 Department.

8 PART VI. SEXUALLY VIOLENT PREDATORS.

9 10-634.

10 (A) IN THIS PART VI OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
11 MEANINGS INDICATED.

12 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF CORRECTION OF THE
13 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

14 (C) "COMMITTED PERSON" MEANS A PERSON WHO HAS BEEN FOUND TO BE A
15 TITLE 10 SEXUALLY VIOLENT PREDATOR AND HAS BEEN COMMITTED TO A STATE
16 FACILITY.

17 (D) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED
18 CONDITION THAT AFFECTS EMOTIONAL OR VOLITIONAL CAPACITY TO PREDISPOSE A
19 PERSON TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A DEGREE THAT MAKES THE
20 PERSON A MENACE TO THE HEALTH AND SAFETY OF OTHERS.

21 (E) "PREDATORY ACT" MEANS AN ACT DIRECTED TOWARD A STRANGER OR AN
22 INDIVIDUAL WITH WHOM A RELATIONSHIP HAS BEEN ESTABLISHED OR PROMOTED
23 FOR THE PRIMARY PURPOSE OF VICTIMIZATION.

24 (F) "SEXUALLY VIOLENT OFFENSE" MEANS SEXUAL ABUSE OF A CHILD, RAPE
25 IN THE FIRST DEGREE, RAPE IN THE SECOND DEGREE, SEXUAL OFFENSE IN THE
26 FIRST DEGREE, SEXUAL OFFENSE IN THE SECOND DEGREE, SEXUAL OFFENSE IN
27 THE THIRD DEGREE, OR AN ATTEMPT TO COMMIT ANY OF THESE OFFENSES.

28 (G) "TITLE 10 SEXUALLY VIOLENT PREDATOR" HAS THE MEANING STATED IN §
29 10-636 OF THIS SUBTITLE.

30 10-635.

31 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
32 COMMISSIONER SHALL GIVE WRITTEN NOTICE TO THE ATTORNEY GENERAL AT
33 LEAST 90 DAYS BEFORE:

34 (1) THE ANTICIPATED RELEASE FROM A CORRECTIONAL FACILITY OF A
35 PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE; OR

1 (2) THE RELEASE OF A PERSON WHO HAS BEEN CHARGED WITH A
2 SEXUALLY VIOLENT OFFENSE AND WHO HAS BEEN DETERMINED TO BE:

3 (I) INCOMPETENT TO STAND TRIAL; OR

4 (II) NOT CRIMINALLY RESPONSIBLE.

5 (B) IF A PERSON IS RETURNED TO A CORRECTIONAL FACILITY FOR NOT MORE
6 THAN 90 DAYS AS A RESULT OF REVOCATION OF POST-RELEASE SUPERVISION, THE
7 COMMISSIONER SHALL GIVE THE WRITTEN NOTICE AS SOON AS PRACTICABLE.

8 10-636.

9 A PERSON IS A TITLE 10 SEXUALLY VIOLENT PREDATORY IF THE PERSON:

10 (1) HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE; AND

11 (2) SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY
12 DISORDER THAT MAKES THE PERSON LIKELY TO ENGAGE IN A PREDATORY ACT
13 INVOLVING A SEXUALLY VIOLENT OFFENSE.

14 10-637.

15 (A) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER A PERSON TO
16 WHOM THE COMMISSIONER GIVES NOTICE UNDER § 10-635 OF THIS SUBTITLE MEETS
17 THE CRITERIA OF A TITLE 10 SEXUALLY VIOLENT PREDATOR.

18 (B) TO MAKE THIS DETERMINATION, THE ATTORNEY GENERAL SHALL
19 RECEIVE RECOMMENDATIONS FROM:

20 (1) A PROSECUTOR'S REVIEW COMMITTEE, TO BE APPOINTED BY THE
21 ATTORNEY GENERAL; AND

22 (2) A MULTIDISCIPLINARY TEAM, TO BE APPOINTED BY THE
23 COMMISSIONER FROM REPRESENTATIVES OF THE DEPARTMENT OF HEALTH AND
24 MENTAL HYGIENE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
25 SERVICES.

26 10-638.

27 THE COMMISSIONER, EMPLOYEES AND OFFICIALS OF THE DIVISION OF
28 CORRECTION, MEMBERS AND STAFF OF THE MULTIDISCIPLINARY TEAM AND THE
29 PROSECUTOR'S REVIEW COMMITTEE, AND PERSONS WHO CONTRACT OR VOLUNTEER
30 FOR SERVICES ARE NOT CIVILLY LIABLE FOR ACTS PERFORMED IN GOOD FAITH IN
31 CARRYING OUT THIS PART VI OF THIS SUBTITLE.

32 10-639.

33 (A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES WRITTEN
34 NOTICE FROM THE COMMISSIONER UNDER § 10-635 OF THIS SUBTITLE, THE
35 ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO FIND THAT PROBABLE

1 CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A TITLE 10
2 SEXUALLY VIOLENT PREDATOR.

3 (B) IF THE COURT FINDS PROBABLE CAUSE EXISTS, THE COURT SHALL:

4 (1) DIRECT THAT THE PERSON BE TAKEN INTO CUSTODY; AND

5 (2) CONDUCT A TRIAL WITHIN 60 DAYS AFTER THE DATE OF THE
6 PROBABLE CAUSE HEARING.

7 (C) THE PERSON SHALL BE ENTITLED TO BE REPRESENTED BY COUNSEL, TO
8 PRESENT EVIDENCE, TO CROSS-EXAMINE WITNESSES, AND TO VIEW AND COPY ALL
9 PETITIONS AND REPORTS IN THE COURT FILE.

10 10-640.

11 (A) THE RULES OF EVIDENCE SHALL APPLY TO A TRIAL HELD UNDER THIS
12 SECTION.

13 (B) IF THE DEFENDANT IS INDIGENT, THE COURT SHALL APPOINT COUNSEL.

14 (C) (1) A DEFENDANT MAY RETAIN AN EXPERT TO PERFORM AN
15 EXAMINATION.

16 (2) IF A DEFENDANT WISHES TO BE EXAMINED BY AN EXPERT OR OTHER
17 INDIVIDUAL OF THE DEFENDANT'S CHOOSING, THE EXAMINER SHALL BE ALLOWED
18 TO HAVE REASONABLE ACCESS TO THE DEFENDANT AS WELL AS TO RELEVANT
19 MEDICAL AND PSYCHOLOGICAL RECORDS AND REPORTS.

20 (3) THE COURT SHALL ASSIST AN INDIGENT DEFENDANT TO OBTAIN AN
21 EXPERT OR OTHER INDIVIDUAL TO PERFORM AN EXAMINATION OR PARTICIPATE IN
22 THE TRIAL ON THE DEFENDANT'S BEHALF IF THE COURT DETERMINES THE
23 SERVICES ARE NECESSARY AND THE REQUESTED COMPENSATION FOR THE
24 SERVICES IS REASONABLE.

25 (D) THE DEFENDANT, THE ATTORNEY GENERAL, OR THE JUDGE IS ENTITLED
26 TO DEMAND THAT THE TRIAL BE BEFORE A JURY.

27 (E) AT A TRIAL UNDER THIS SECTION, THE STATE HAS THE BURDEN OF
28 PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS A TITLE 10
29 SEXUALLY VIOLENT PREDATOR.

30 10-641.

31 IF THE COURT OR JURY DETERMINES THAT A DEFENDANT IS A TITLE 10
32 SEXUALLY VIOLENT PREDATOR, THE DEFENDANT SHALL BE PLACED IN THE
33 CUSTODY OF THE SECRETARY FOR CONTROL, CARE, AND TREATMENT AT A STATE
34 FACILITY UNTIL THE DEFENDANT'S MENTAL ABNORMALITY OR PERSONALITY
35 DISORDER HAS SO CHANGED THAT THE DEFENDANT IS SAFE TO BE AT LARGE.

1 10-642.

2 (A) (1) A COMMITTED PERSON IS SUBJECT TO AN ANNUAL MENTAL
3 EXAMINATION IN A STATE FACILITY.

4 (2) AN OFFICIAL DESIGNATED BY THE HEAD OF THE STATE FACILITY
5 SHALL COMPLETE A REPORT OF THE MENTAL EXAMINATION AND SHALL FILE A
6 COPY OF THE REPORT WITH THE COURT THAT ORDERED THE COMMITTED PERSON
7 TO A STATE FACILITY UNDER THIS PART VI OF THIS SUBTITLE.

8 (B) THE COURT SHALL CONDUCT AN ANNUAL STATUS REVIEW HEARING FOR
9 EACH COMMITTED PERSON.

10 (C) A COMMITTED PERSON SHALL BE ENTITLED TO PETITION THE COURT FOR
11 DISCHARGE AT THE COMMITTED PERSON'S ANNUAL STATUS REVIEW HEARING.

12 (D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED PERSON WITH AN
13 ANNUAL WRITTEN NOTICE OF THE COMMITTED PERSON'S RIGHT TO PETITION THE
14 COURT FOR RELEASE.

15 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH
16 THE ANNUAL REPORT.

17 (3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO
18 REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING,
19 BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

20 10-643.

21 (A) (1) IF THE COURT AT THE ANNUAL STATUS REVIEW HEARING
22 DETERMINES THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT THE COMMITTED
23 PERSON'S MENTAL ABNORMALITY OR PERSONALITY DISORDER HAS CHANGED SO
24 THAT THE COMMITTED PERSON IS SAFE TO BE AT LARGE AND WILL NOT ENGAGE IN
25 A PREDATORY ACT INVOLVING SEXUALLY VIOLENT OFFENSES IF DISCHARGED, THE
26 COURT SHALL SET A RELEASE HEARING.

27 (2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED
28 TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF
29 EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §
30 10-640 OF THIS SUBTITLE.

31 (3) THE ATTORNEY GENERAL:

32 (I) SHALL REPRESENT THE STATE AT THE RELEASE HEARING;

33 (II) MAY REQUEST A JURY TRIAL; AND

34 (III) MAY REQUEST THAT THE COMMITTED PERSON BE EVALUATED
35 BY EXPERTS CHOSEN BY THE STATE.

1 (4) THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE
2 DOUBT THAT THE COMMITTED PERSON'S MENTAL ABNORMALITY OR PERSONALITY
3 DISORDER REMAINS SO SEVERE AS TO MAKE THE COMMITTED PERSON, IF
4 RELEASED:

5 (I) NOT SAFE TO BE AT LARGE; OR

6 (II) LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A
7 SEXUALLY VIOLENT OFFENSE.

8 (B) THE COURT SHALL RELEASE A COMMITTED PERSON FROM CUSTODY IF
9 THE COURT FINDS AT A RELEASE HEARING THAT THE STATE HAS NOT PROVEN
10 BEYOND A REASONABLE DOUBT THAT THE COMMITTED PERSON IS NOT SAFE TO BE
11 AT LARGE OR IS LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A TITLE 10
12 SEXUALLY VIOLENT OFFENSE IF DISCHARGED.

13 10-644.

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (2) "DESIGNATED FAMILY MEMBER" MEANS A DESIGNATED FAMILY
17 MEMBER OF A VICTIM WHO IS DECEASED, DISABLED, OR A MINOR.

18 (3) "VICTIM" MEANS A VICTIM OF A SEXUALLY VIOLENT OFFENSE.

19 (B) THE ATTORNEY GENERAL SHALL NOTIFY A VICTIM OR DESIGNATED
20 FAMILY MEMBER OF THE RIGHTS PROVIDED UNDER THIS SECTION.

21 (C) A VICTIM OR DESIGNATED FAMILY MEMBER WHO HAS REQUESTED
22 NOTIFICATION IN ACCORDANCE WITH REGULATIONS THAT THE ATTORNEY
23 GENERAL ADOPTS SHALL BE PROMPTLY NOTIFIED IN WRITING WHEN THE COURT
24 ORDERS:

25 (1) A PROBABLE CAUSE HEARING OR TRIAL TO DETERMINE WHETHER A
26 PERSON IS A TITLE 10 SEXUALLY VIOLENT PREDATOR;

27 (2) A STATUS REVIEW HEARING OR RELEASE HEARING FOR A
28 COMMITTED PERSON; OR

29 (3) THE RELEASE OF A COMMITTED PERSON.

30 10-645.

31 THIS PART VI OF THIS SUBTITLE DOES NOT AFFECT THE OPERATION OF
32 ARTICLE 27, § 792 OF THE CODE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 1998.