
By: **Senators Stone, Bromwell, Colburn, Green, Haines, and Jimeno
Jimeno, Middlebrooks, and Forchard**

Introduced and read first time: January 21, 1998

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 18, 1998

CHAPTER _____

1 AN ACT concerning

2 **Sexually Violent Predators**

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; applying certain procedures for
12 determining whether persons are sexually violent predators to a certain
13 definition; requiring that a prosecutor's review committee and a
14 multidisciplinary team be formed to make recommendations concerning the
15 identification of ~~Title 10~~ sexually violent predators; making the Commissioner
16 and certain other individuals immune from civil liability for acts performed in
17 good faith in carrying out this Act; specifying the criteria for ~~Title 10~~ sexually
18 violent predators; authorizing the Attorney General to petition the circuit court
19 to find probable cause that a certain person is a ~~Title 10~~ sexually violent
20 predator; authorizing a court to conduct a trial under certain circumstances to
21 determine if a defendant is a ~~Title 10~~ sexually violent predator; allowing a
22 defendant certain rights at trial; requiring that the standard of proof at a trial to
23 determine whether a person is a ~~Title 10~~ sexually violent predator be that of
24 proof beyond a reasonable doubt; requiring that a person who is found to be a
25 ~~Title 10~~ sexually violent predator be placed in the custody of the Secretary of the
26 Department of Health and Mental Hygiene for control, care, and treatment at a
27 State facility until the person's mental abnormality or personality disorder has
28 so changed that the person is safe to be at large; requiring that a certain

1 committed person in a State facility be subject to an annual mental examination
2 and an annual status review hearing; authorizing the court to determine at an
3 annual status review hearing that probable cause exists to believe that the
4 committed person is safe to be at large and will not engage in acts of sexual
5 violence if discharged; authorizing that a release hearing be held under certain
6 circumstances; requiring that the court release a committed person under
7 certain circumstances; providing that this Act have no effect on the operation of
8 certain provisions of the Code; requiring that victims and designated family
9 members of certain victims be given certain rights at certain hearings and trials;
10 defining certain terms; and generally relating to ~~Title 10~~ sexually violent
11 predators.

12 BY adding to

13 Article 27 - Crimes and Punishments
14 Section 789A
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 1997 Supplement)

17 BY repealing and reenacting, without amendments,

18 Article 27 - Crimes and Punishments
19 Section 792(a)(1)
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1997 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article 27 - Crimes and Punishments
24 Section 792(a)(7) and (8)
25 Annotated Code of Maryland
26 (1996 Replacement Volume and 1997 Supplement)

27 BY repealing

28 Article 27 - Crimes and Punishments
29 Section 792(b)
30 Annotated Code of Maryland
31 (1996 Replacement Volume and 1997 Supplement)

32 BY renumbering

33 Article 27 - Crimes and Punishments
34 Section 792(c) through (n), respectively
35 to be Section 792(b) through (m), respectively
36 Annotated Code of Maryland
37 (1996 Replacement Volume and 1997 Supplement)

38 BY repealing and reenacting, without amendments,

39 Article - Health - General

1 Section 1-101(a), (c), and (i) and 10-101(e) and (h)
 2 Annotated Code of Maryland
 3 (1994 Replacement Volume and 1997 Supplement)

4 BY adding to
 5 Article - Health - General
 6 Section 10-634 through 10-645, inclusive, to be under the new part "Part VI.
 7 Sexually Violent Predators"
 8 Annotated Code of Maryland
 9 (1994 Replacement Volume and 1997 Supplement)

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

12 **Article 27 - Crimes and Punishments**

13 789A.

14 IF A PERSON HAS BEEN PLACED IN THE CUSTODY OF THE SECRETARY OF THE
 15 DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 10-641 OF THE HEALTH -
 16 GENERAL ARTICLE AS A ~~TITLE 10~~ SEXUALLY VIOLENT PREDATOR, AND A VICTIM OF A
 17 SEXUALLY VIOLENT CRIME COMMITTED BY THE ~~TITLE 10~~ SEXUALLY VIOLENT
 18 PREDATOR MAKES A WRITTEN REQUEST TO THE ATTORNEY GENERAL FOR
 19 NOTIFICATION, THE VICTIM HAS THE RIGHTS PROVIDED UNDER § 10-644 OF THE
 20 HEALTH - GENERAL ARTICLE.

21 792.

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

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

24 (i) A child sexual offender;

25 (ii) An offender;

26 (iii) A sexually violent offender; ~~for~~

27 (iv) A sexually violent predator; ~~OR~~ UNDER § 10-636 OF THE HEALTH
 28 - GENERAL ARTICLE.

29 ~~(V) A COMMITTED PERSON UNDER TITLE 10, SUBTITLE 6, PART VI~~
 30 ~~OF THE HEALTH - GENERAL ARTICLE WHO IS RELEASED FROM CUSTODY OF THE~~
 31 ~~SECRETARY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.~~

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

34 (ii) "Release" includes:

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

4 2. RELEASE FROM THE CUSTODY OF THE SECRETARY OF
 5 THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

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

7 [(b) (1) Subject to paragraphs (3) and (4) of this subsection, if a person is
 8 convicted of a second or subsequent sexually violent offense, the State's Attorney may
 9 request the court to determine before sentencing whether the person is a sexually
 10 violent predator.

11 (2) If the State's Attorney makes a request under paragraph (1) of this
 12 subsection, the court shall determine before or at sentencing whether the person is a
 13 sexually violent predator.

14 (3) In making a determination under paragraph (1) of this subsection,
 15 the court shall consider:

16 (i) Any evidence that the court considers appropriate to the
 17 determination of whether the individual is a sexually violent predator, including the
 18 presentencing investigation and sexually violent offender's inmate record;

19 (ii) Any evidence introduced by the person convicted; and

20 (iii) At the request of the State's Attorney, any evidence presented
 21 by a victim of the sexually violent offense.

22 (4) The State's Attorney may not request a court to determine if a person
 23 is a sexually violent predator under this subsection unless the State's Attorney serves
 24 written notice of intent to make the request on the defendant or the defendant's
 25 lawyer at least 30 days before trial.]

26 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 792(c) through
 27 (n), respectively, of Article 27 - Crimes and Punishments of the Annotated Code of
 28 Maryland be renumbered to be Section(s) 792(b) through (m), respectively.

29 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 30 read as follows:

31 **Article - Health - General**

32 1-101.

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

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

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

2 10-101.

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

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

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

9 PART VI. SEXUALLY VIOLENT PREDATORS.

10 10-634.

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

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

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

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

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

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

29 (G) "~~TITLE 10~~ SEXUALLY VIOLENT PREDATOR" HAS THE MEANING STATED IN §
30 10-636 OF THIS SUBTITLE.

31 10-635.

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

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

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

5 (I) INCOMPETENT TO STAND TRIAL; OR

6 (II) NOT CRIMINALLY RESPONSIBLE.

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

10 10-636.

11 A PERSON IS A ~~TITLE 10 SEXUALLY VIOLENT PREDATORY~~ PREDATOR IF THE
12 PERSON:

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

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

17 10-637.

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

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

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

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

29 10-638.

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

1 10-639.

2 (A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES WRITTEN
3 NOTICE FROM THE COMMISSIONER UNDER § 10-635 OF THIS SUBTITLE, THE
4 ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO FIND THAT PROBABLE
5 CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A ~~TITLE 10~~
6 SEXUALLY VIOLENT PREDATOR.

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

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

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

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

14 10-640.

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

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

18 (C) (1) A DEFENDANT MAY RETAIN AN EXPERT TO PERFORM AN
19 EXAMINATION.

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

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

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

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

34 10-641.

35 IF THE COURT OR JURY DETERMINES THAT A DEFENDANT IS A ~~TITLE 10~~
36 SEXUALLY VIOLENT PREDATOR, THE DEFENDANT SHALL BE PLACED IN THE

1 CUSTODY OF THE SECRETARY FOR CONTROL, CARE, AND TREATMENT AT A STATE
2 FACILITY UNTIL THE DEFENDANT'S MENTAL ABNORMALITY OR PERSONALITY
3 DISORDER HAS SO CHANGED THAT THE DEFENDANT IS SAFE TO BE AT LARGE.

4 10-642.

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

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

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

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

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

18 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH
19 THE ANNUAL REPORT.

20 (3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO
21 REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING,
22 BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

23 10-643.

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

30 (2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED
31 TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF
32 EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §
33 10-640 OF THIS SUBTITLE.

34 (3) THE ATTORNEY GENERAL:

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

36 (II) MAY REQUEST A JURY TRIAL; AND

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

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

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

8 (II) LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A
9 SEXUALLY VIOLENT OFFENSE.

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

15 10-644.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

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

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

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

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

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

29 (2) A STATUS REVIEW HEARING OR RELEASE HEARING FOR A
30 COMMITTED PERSON; OR

31 (3) THE RELEASE OF A COMMITTED PERSON.

32 10-645.

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

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