

SENATE BILL 186

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1998 Regular Session  
8lr0387  
CF 8lr0225

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By: **Senator Bromwell**

Introduced and read first time: January 28, 1998

Assigned to: Judicial Proceedings

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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 sexually violent predators; applying certain procedures for determining  
12 whether persons are sexually violent predators to a certain definition; requiring  
13 that a prosecutor's review committee and a multidisciplinary team be formed to  
14 make recommendations concerning the identification of sexually violent  
15 predators; making the Commissioner and certain other individuals immune  
16 from civil liability for acts performed in good faith in carrying out this Act;  
17 specifying the criteria for sexually violent predators; authorizing the Attorney  
18 General to petition the circuit court to find probable cause that a certain person  
19 is a sexually violent predator; authorizing a court to conduct a trial under  
20 certain circumstances to determine if a defendant is a sexually violent predator;  
21 allowing a defendant certain rights at trial; requiring that the standard of proof  
22 at a trial to determine whether a person is a sexually violent predator be that of  
23 proof beyond a reasonable doubt; requiring that a person who is found to be a  
24 sexually violent predator be placed in the custody of the Secretary of the  
25 Department of Health and Mental Hygiene for control, care, and treatment at a  
26 State facility until the person's mental abnormality or personality disorder has  
27 so changed that the person is safe to be at large; requiring that a certain  
28 committed person in a State facility be subject to an annual mental examination  
29 and an annual status review hearing; authorizing the court to determine at an  
30 annual status review hearing that probable cause exists to believe that the  
31 committed person is safe to be at large and will not engage in acts of sexual  
32 violence if discharged; authorizing that a release hearing be held under certain  
33 circumstances; requiring that the court release a committed person under  
34 certain circumstances; providing that this Act have no effect on the operation of  
35 certain provisions of the Code; requiring that victims and designated family

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

3 BY adding to

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

8 BY repealing and reenacting, without amendments,

9 Article 27 - Crimes and Punishments  
10 Section 792(a)(1)  
11 Annotated Code of Maryland  
12 (1996 Replacement Volume and 1997 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article 27 - Crimes and Punishments  
15 Section 792(a)(7) and (8)  
16 Annotated Code of Maryland  
17 (1996 Replacement Volume and 1997 Supplement)

18 BY repealing

19 Article 27 - Crimes and Punishments  
20 Section 792(b)  
21 Annotated Code of Maryland  
22 (1996 Replacement Volume and 1997 Supplement)

23 BY renumbering

24 Article 27 - Crimes and Punishments  
25 Section 792(c) through (n), respectively  
26 to be Section 792(b) through (m), respectively  
27 Annotated Code of Maryland  
28 (1996 Replacement Volume and 1997 Supplement)

29 BY repealing and reenacting, without amendments,

30 Article - Health - General  
31 Section 1-101(a), (c), and (i) and 10-101(e) and (h)  
32 Annotated Code of Maryland  
33 (1994 Replacement Volume and 1997 Supplement)

34 BY adding to

35 Article - Health - General  
36 Section 10-634 through 10-645, inclusive, to be under the new part "Part VI.  
37 Sexually Violent Predators"

1 Annotated Code of Maryland  
2 (1994 Replacement Volume and 1997 Supplement)

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

5 **Article 27 - Crimes and Punishments**

6 789A.

7 IF A PERSON HAS BEEN PLACED IN THE CUSTODY OF THE SECRETARY OF THE  
8 DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 10-641 OF THE HEALTH -  
9 GENERAL ARTICLE AS A SEXUALLY VIOLENT PREDATOR, AND A VICTIM OF A  
10 SEXUALLY VIOLENT CRIME COMMITTED BY THE SEXUALLY VIOLENT PREDATOR  
11 MAKES A WRITTEN REQUEST TO THE ATTORNEY GENERAL FOR NOTIFICATION, THE  
12 VICTIM HAS THE RIGHTS PROVIDED UNDER § 10-644 OF THE HEALTH - GENERAL  
13 ARTICLE.

14 792.

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

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

17 (i) A child sexual offender;

18 (ii) An offender;

19 (iii) A sexually violent offender; or

20 (iv) A sexually violent predator UNDER § 10-636 OF THE HEALTH -  
21 GENERAL ARTICLE.

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

24 (ii) "Release" includes:

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

28 2. RELEASE FROM THE CUSTODY OF THE SECRETARY OF  
29 THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

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

31 [(b) (1) Subject to paragraphs (3) and (4) of this subsection, if a person is  
32 convicted of a second or subsequent sexually violent offense, the State's Attorney may



## PART VI. SEXUALLY VIOLENT PREDATORS.

10-634.

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

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

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

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

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

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

(G) "SEXUALLY VIOLENT PREDATOR" MEANS AN INDIVIDUAL DESCRIBED IN § 10-636 OF THIS SUBTITLE.

10-635.

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

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

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

(I) INCOMPETENT TO STAND TRIAL; OR

(II) NOT CRIMINALLY RESPONSIBLE.

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

1 10-636.

2 A PERSON IS A SEXUALLY VIOLENT PREDATOR IF THE PERSON:

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

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

7 10-637.

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

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

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

15 (2) A MULTIDISCIPLINARY TEAM, TO BE APPOINTED BY THE  
16 COMMISSIONER FROM REPRESENTATIVES OF THE DEPARTMENT OF HEALTH AND  
17 MENTAL HYGIENE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
18 SERVICES.

19 10-638.

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

25 10-639.

26 (A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES WRITTEN  
27 NOTICE FROM THE COMMISSIONER UNDER § 10-635 OF THIS SUBTITLE, THE  
28 ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO FIND THAT PROBABLE  
29 CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A  
30 SEXUALLY VIOLENT PREDATOR.

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

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

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

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

4 10-640.

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

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

8 (C) (1) A DEFENDANT MAY RETAIN AN EXPERT TO PERFORM AN  
9 EXAMINATION.

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

14 (3) THE COURT SHALL ASSIST AN INDIGENT DEFENDANT TO OBTAIN AN  
15 EXPERT OR OTHER INDIVIDUAL TO PERFORM AN EXAMINATION OR PARTICIPATE IN  
16 THE TRIAL ON THE DEFENDANT'S BEHALF IF THE COURT DETERMINES THE  
17 SERVICES ARE NECESSARY AND THE REQUESTED COMPENSATION FOR THE  
18 SERVICES IS REASONABLE.

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

21 (E) AT A TRIAL UNDER THIS SECTION, THE STATE HAS THE BURDEN OF  
22 PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS A SEXUALLY  
23 VIOLENT PREDATOR.

24 10-641.

25 IF THE COURT OR JURY DETERMINES THAT A DEFENDANT IS A SEXUALLY  
26 VIOLENT PREDATOR, THE DEFENDANT SHALL BE PLACED IN THE CUSTODY OF THE  
27 SECRETARY FOR CONTROL, CARE, AND TREATMENT AT A STATE FACILITY UNTIL THE  
28 DEFENDANT'S MENTAL ABNORMALITY OR PERSONALITY DISORDER HAS SO  
29 CHANGED THAT THE DEFENDANT IS SAFE TO BE AT LARGE.

30 10-642.

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

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

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

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

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

8 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH  
9 THE ANNUAL REPORT.

10 (3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO  
11 REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING,  
12 BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

13 10-643.

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

20 (2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED  
21 TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF  
22 EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §  
23 10-640 OF THIS SUBTITLE.

24 (3) THE ATTORNEY GENERAL:

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

26 (II) MAY REQUEST A JURY TRIAL; AND

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

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

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

34 (II) LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A  
35 SEXUALLY VIOLENT OFFENSE.

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

6 10-644.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
8 INDICATED.

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

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

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

14 (C) A VICTIM OR DESIGNATED FAMILY MEMBER WHO HAS REQUESTED  
15 NOTIFICATION IN ACCORDANCE WITH REGULATIONS THAT THE ATTORNEY  
16 GENERAL ADOPTS SHALL BE PROMPTLY NOTIFIED IN WRITING WHEN THE COURT  
17 ORDERS:

18 (1) A PROBABLE CAUSE HEARING OR TRIAL TO DETERMINE WHETHER A  
19 PERSON IS A SEXUALLY VIOLENT PREDATOR;

20 (2) A STATUS REVIEW HEARING OR RELEASE HEARING FOR A  
21 COMMITTED PERSON; OR

22 (3) THE RELEASE OF A COMMITTED PERSON.

23 10-645.

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

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 1998.