

SENATE BILL 4

Unofficial Copy  
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SB 117/98 - JPR

1999 Regular Session  
9lr0465

(PRE-FILED)

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By: **Senators Stone and Bromwell**

Requested: November 12, 1998

Introduced and read first time: January 13, 1999

Assigned to: Judicial Proceedings

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A BILL ENTITLED

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 Correction of the Department  
8 of Public Safety and Correctional Services to give notice to the Attorney General  
9 before certain persons who have been convicted of certain sexually violent  
10 offenses are released from confinement; requiring the Attorney General to  
11 determine if certain persons meet the criteria of sexually violent predators;  
12 applying certain procedures for determining whether persons are sexually  
13 violent predators to a certain definition; requiring that a prosecutor's review  
14 committee and a multidisciplinary team be formed to make recommendations  
15 concerning the identification of sexually violent predators; making the  
16 Commissioner and certain other individuals immune from civil liability for acts  
17 performed in good faith in carrying out this Act; specifying the criteria for  
18 sexually violent predators; authorizing the Attorney General to petition the  
19 circuit court to find probable cause that a certain person is a sexually violent  
20 predator; authorizing a court to conduct a trial under certain circumstances to  
21 determine if a defendant is a sexually violent predator; allowing a defendant  
22 certain rights at trial; requiring that the standard of proof at a trial to  
23 determine whether a person is a sexually violent predator be that of proof  
24 beyond a reasonable doubt; requiring that a person who is found to be a sexually  
25 violent predator be placed in the custody of the Secretary of the Department of  
26 Health and Mental Hygiene for control, care, and treatment at a State facility  
27 until the person's mental abnormality or personality disorder has so changed  
28 that the person is safe to be at large; requiring that a certain committed person  
29 in a State facility be subject to an annual mental examination and an annual  
30 status review hearing; authorizing the court to determine at an annual status  
31 review hearing that probable cause exists to believe that the committed person  
32 is safe to be at large and will not engage in acts of sexual violence if discharged;  
33 authorizing that a release hearing be held under certain circumstances;  
34 requiring that the court release a committed person under certain

1 circumstances; providing that this Act have no effect on the operation of certain  
2 provisions of the Code; requiring that victims and designated family members of  
3 certain victims be given certain rights at certain hearings and trials; defining  
4 certain terms; and generally relating to sexually violent predators.

5 BY adding to  
6 Article 27 - Crimes and Punishments  
7 Section 789A  
8 Annotated Code of Maryland  
9 (1996 Replacement Volume and 1998 Supplement)

10 BY repealing and reenacting, without amendments,  
11 Article 27 - Crimes and Punishments  
12 Section 792(a)(1)  
13 Annotated Code of Maryland  
14 (1996 Replacement Volume and 1998 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article 27 - Crimes and Punishments  
17 Section 792(a)(7) and (8)  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume and 1998 Supplement)

20 BY repealing  
21 Article 27 - Crimes and Punishments  
22 Section 792(b)  
23 Annotated Code of Maryland  
24 (1996 Replacement Volume and 1998 Supplement)

25 BY renumbering  
26 Article 27 - Crimes and Punishments  
27 Section 792(c) through (n), respectively  
28 to be Section 792(b) through (m), respectively  
29 Annotated Code of Maryland  
30 (1996 Replacement Volume and 1998 Supplement)

31 BY repealing and reenacting, without amendments,  
32 Article - Health - General  
33 Section 1-101(a), (c), and (i) and 10-101(e) and (h)  
34 Annotated Code of Maryland  
35 (1994 Replacement Volume and 1998 Supplement)

36 BY adding to  
37 Article - Health - General

1 Section 10-634 through 10-645, inclusive, to be under the new part "Part VI.  
2 Sexually Violent Predators"  
3 Annotated Code of Maryland  
4 (1994 Replacement Volume and 1998 Supplement)

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

7 **Article 27 - Crimes and Punishments**

8 789A.

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

16 792.

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

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

19 (i) A child sexual offender;

20 (ii) An offender;

21 (iii) A sexually violent offender;

22 (iv) A sexually violent predator UNDER § 10-636 OF THE HEALTH -  
23 GENERAL ARTICLE;

24 (v) A child sexual offender who, before moving into this State, was  
25 required to register in another state for an offense occurring before October 1, 1995;  
26 or

27 (vi) An offender, a sexually violent offender, or a sexually violent  
28 predator who, before moving into this State, was required to register in another state  
29 for an offense occurring before July 1, 1997.

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

32 (ii) "Release" includes:



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 SEXUALLY VIOLENT PREDATOR AND HAS BEEN COMMITTED TO A STATE 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) "SEXUALLY VIOLENT PREDATOR" HAS THE MEANING STATED IN § 10-636  
29 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:

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 SEXUALLY VIOLENT PREDATOR IF THE PERSON:

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

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

16 10-637.

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

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

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

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

28 10-638.

29 THE COMMISSIONER, EMPLOYEES AND OFFICIALS OF THE DIVISION OF  
30 CORRECTION, MEMBERS AND STAFF OF THE MULTIDISCIPLINARY TEAM AND THE  
31 PROSECUTOR'S REVIEW COMMITTEE, AND PERSONS WHO CONTRACT OR VOLUNTEER  
32 FOR SERVICES ARE NOT CIVILLY LIABLE FOR ACTS PERFORMED IN GOOD FAITH IN  
33 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  
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 SEXUALLY  
33 VIOLENT PREDATOR.

34 10-641.

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

1 SECRETARY FOR CONTROL, CARE, AND TREATMENT AT A STATE FACILITY UNTIL THE  
2 DEFENDANT'S MENTAL ABNORMALITY OR PERSONALITY DISORDER HAS SO  
3 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 SEXUALLY  
14 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 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, 1999.