
By: **Senators Stone and Bromwell**
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Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Sexually Violent Predators**

3 FOR the purpose of creating a procedure in which an individual who has been
4 convicted of or charged with a sexually violent offense and who suffers from a
5 certain mental abnormality or personality disorder may be placed in the custody
6 of the Secretary of Health and Mental Hygiene until the individual is safe to be
7 at large; requiring the Commissioner of Correction of the Department of Public
8 Safety and Correctional Services to give notice to the Attorney General before
9 certain individuals who have been convicted of certain sexually violent offenses
10 are released from confinement; requiring the Attorney General to determine if
11 certain individuals meet the criteria of sexually violent predators; applying
12 certain procedures for determining whether certain individuals 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 individual 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 an individual is a sexually violent predator be that of proof
24 beyond a reasonable doubt; requiring that an individual who is found to be a
25 sexually violent predator be placed in the custody of the Secretary of Health and
26 Mental Hygiene for control, care, and treatment at a State facility until the
27 individual's mental abnormality or personality disorder has so changed that the
28 individual is safe to be at large; requiring that a certain committed individual in
29 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
32 individual is safe to be at large and will not engage in acts of sexual violence if
33 discharged; authorizing that a release hearing be held under certain
34 circumstances; requiring that the court release a committed individual under
35 certain circumstances; providing that this Act have no effect on the operation of

1 certain provisions of the Code; requiring that victims and designated family
2 members of certain victims be given certain rights at certain hearings and trials;
3 defining certain terms; and generally relating to 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 1999 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 1999 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 1999 Supplement)

19 BY repealing

20 Article 27 - Crimes and Punishments
21 Section 792(b)
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1999 Supplement)

24 BY renumbering

25 Article 27 - Crimes and Punishments
26 Section 792(c) through (m), respectively to be Section 792(b) through (l),
27 respectively
28 Annotated Code of Maryland
29 (1996 Replacement Volume and 1999 Supplement)

30 BY repealing and reenacting, without amendments,

31 Article - Health - General
32 Section 1-101(a), (c), and (i) and 10-101(e) and (h)
33 Annotated Code of Maryland
34 (1994 Replacement Volume and 1999 Supplement)

35 BY adding to

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

1 Sexually Violent Predators"
2 Annotated Code of Maryland
3 (1994 Replacement Volume and 1999 Supplement)

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

6 **Article 27 - Crimes and Punishments**

7 789A.

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

14 792.

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

16 (7) "Registrant" means an individual who is:

17 (i) A child sexual offender;

18 (ii) An offender;

19 (iii) A sexually violent offender;

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

22 (v) A child sexual offender who, before moving into this State, was
23 required to register in another state or by a federal, military, or Native American
24 tribal court for an offense occurring before October 1, 1995;

25 (vi) An offender, a sexually violent offender, or a sexually violent
26 predator who, before moving into this State, was required to register in another state
27 or by a federal, military, or Native American tribal court for an offense occurring
28 before July 1, 1997; or

29 (vii) A child sexual offender, offender, sexually violent offender, or
30 sexually violent predator who is required to register in another state, who is not a
31 resident of this State, and who enters this State for the purpose of:

32 1. Employment, or to carry on a vocation, that is full time or
33 part time for a period of the time exceeding 14 days or for an aggregate period of time
34 exceeding 30 days during any calendar year, whether financially compensated,
35 volunteered, or for the purpose of government or educational benefit; or

Article - Health - General

1-101.

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

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

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

10-101.

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

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

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

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 INDIVIDUAL" MEANS AN INDIVIDUAL 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 AN INDIVIDUAL TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A DEGREE THAT MAKES THE INDIVIDUAL 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" HAS THE MEANING STATED IN § 10-636 OF THIS SUBTITLE.

1 10-635.

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

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

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

9 (I) INCOMPETENT TO STAND TRIAL; OR

10 (II) NOT CRIMINALLY RESPONSIBLE.

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

14 10-636.

15 AN INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR IF THE INDIVIDUAL:

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

17 (2) SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY
18 DISORDER THAT MAKES THE INDIVIDUAL LIKELY TO ENGAGE IN A PREDATORY ACT
19 INVOLVING A SEXUALLY VIOLENT OFFENSE.

20 10-637.

21 (A) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER AN INDIVIDUAL
22 TO WHOM THE COMMISSIONER GIVES NOTICE UNDER § 10-635 OF THIS SUBTITLE
23 MEETS THE CRITERIA OF A SEXUALLY VIOLENT PREDATOR.

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

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

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

32 10-638.

33 THE COMMISSIONER, EMPLOYEES AND OFFICIALS OF THE DIVISION OF
34 CORRECTION, MEMBERS AND STAFF OF THE MULTIDISCIPLINARY TEAM AND THE

1 PROSECUTOR'S REVIEW COMMITTEE, AND PERSONS WHO CONTRACT OR VOLUNTEER
2 FOR SERVICES ARE NOT CIVILLY LIABLE FOR ACTS PERFORMED IN GOOD FAITH IN
3 CARRYING OUT THIS PART VI OF THIS SUBTITLE.

4 10-639.

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

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

11 (1) DIRECT THAT THE INDIVIDUAL BE TAKEN INTO CUSTODY; AND

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

14 (C) THE INDIVIDUAL SHALL BE ENTITLED TO BE REPRESENTED BY COUNSEL,
15 TO PRESENT EVIDENCE, TO CROSS-EXAMINE WITNESSES, AND TO VIEW AND COPY
16 ALL PETITIONS AND REPORTS IN THE COURT FILE.

17 10-640.

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

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

21 (C) (1) A DEFENDANT MAY RETAIN AN EXPERT TO PERFORM AN
22 EXAMINATION.

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

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

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

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

1 10-641.

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

7 10-642.

8 (A) (1) A COMMITTED INDIVIDUAL IS SUBJECT TO AN ANNUAL MENTAL
9 EXAMINATION IN A STATE FACILITY.

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

14 (B) THE COURT SHALL CONDUCT AN ANNUAL STATUS REVIEW HEARING FOR
15 EACH COMMITTED INDIVIDUAL.

16 (C) A COMMITTED INDIVIDUAL SHALL BE ENTITLED TO PETITION THE COURT
17 FOR DISCHARGE AT THE COMMITTED INDIVIDUAL'S ANNUAL STATUS REVIEW
18 HEARING.

19 (D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED INDIVIDUAL
20 WITH AN ANNUAL WRITTEN NOTICE OF THE COMMITTED INDIVIDUAL'S RIGHT TO
21 PETITION THE COURT FOR RELEASE.

22 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH
23 THE ANNUAL REPORT.

24 (3) THE COMMITTED INDIVIDUAL IS ENTITLED TO AN ATTORNEY TO
25 REPRESENT THE COMMITTED INDIVIDUAL AT THE ANNUAL STATUS REVIEW
26 HEARING, BUT THE COMMITTED INDIVIDUAL IS NOT ENTITLED TO BE PRESENT AT
27 THE HEARING.

28 10-643.

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

35 (2) AT THE RELEASE HEARING, THE COMMITTED INDIVIDUAL IS
36 ENTITLED TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE
37 USE OF EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING
38 UNDER § 10-640 OF THIS SUBTITLE.

1 (3) THE ATTORNEY GENERAL:

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

3 (II) MAY REQUEST A JURY TRIAL; AND

4 (III) MAY REQUEST THAT THE COMMITTED INDIVIDUAL BE
5 EVALUATED BY EXPERTS CHOSEN BY THE STATE.

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

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

11 (II) LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A
12 SEXUALLY VIOLENT OFFENSE.

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

18 10-644.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

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

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

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

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

30 (1) A PROBABLE CAUSE HEARING OR TRIAL TO DETERMINE WHETHER
31 AN INDIVIDUAL IS A SEXUALLY VIOLENT PREDATOR;

32 (2) A STATUS REVIEW HEARING OR RELEASE HEARING FOR A
33 COMMITTED INDIVIDUAL; OR

34 (3) THE RELEASE OF A COMMITTED INDIVIDUAL.

1 10-645.

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

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2000.