

SENATE BILL 134

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SB 117/98 - JPR

2001 Regular Session  
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By: **Senators Stone, Bromwell, Collins, Della, Haines, Hoffman, Hooper,  
Jimeno, and Sfikas**

Introduced and read first time: January 18, 2001

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 Health and Mental Hygiene until the person is safe to be at large;  
7 requiring the Commissioner of Correction of the Department of Public Safety  
8 and Correctional Services to give notice to the Attorney General before certain  
9 persons who have been convicted of certain sexually violent offenses are  
10 released from confinement; requiring the Attorney General to determine if  
11 certain persons meet the criteria of sexually violent predators; repealing certain  
12 procedures for determining whether a person is a sexually violent predator;  
13 requiring that a prosecutor's review committee and a multidisciplinary team be  
14 formed to make recommendations concerning the identification of sexually  
15 violent predators; making the Commissioner and certain other individuals  
16 immune from civil liability for acts performed in good faith in carrying out this  
17 Act; specifying the criteria for sexually violent predators; authorizing the  
18 Attorney General to petition the circuit court to find probable cause that a  
19 certain person is a sexually violent predator; authorizing a court to conduct a  
20 trial under certain circumstances to determine if a defendant is a sexually  
21 violent predator; allowing a defendant certain rights at trial; requiring that the  
22 standard of proof at a trial to determine whether a person is a sexually violent  
23 predator be that of proof beyond a reasonable doubt; requiring that a person who  
24 is found to be a sexually violent predator be placed in the custody of the  
25 Secretary 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

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; altering certain definitions; and generally relating to  
4 sexually violent predators.

5 BY repealing and reenacting, with amendments,

6 Article - Criminal Procedure

7 Section 11-701(e) and (h)

8 Annotated Code of Maryland

9 (As enacted by Chapter \_\_\_\_\_ (S.B. \_\_\_\_\_/H.B. \_\_\_\_\_) (1lr0739) of the Acts of the

10 General Assembly of 2001)

11 BY repealing

12 Article - Criminal Procedure

13 Section 11-703

14 Annotated Code of Maryland

15 (As enacted by Chapter \_\_\_\_\_ (S.B. \_\_\_\_\_/H.B. \_\_\_\_\_) (1lr0739) of the Acts of the

16 General Assembly of 2001)

17 BY adding to

18 Article - Criminal Procedure

19 Section 11-718.1

20 Annotated Code of Maryland

21 (As enacted by Chapter \_\_\_\_\_ (S.B. \_\_\_\_\_/H.B. \_\_\_\_\_) (1lr0739) of the Acts of the

22 General Assembly of 2001)

23 BY repealing and reenacting, without amendments,

24 Article - Health - General

25 Section 1-101(a), (c), and (i) and 10-101(e) and (h)

26 Annotated Code of Maryland

27 (2000 Replacement Volume)

28 BY adding to

29 Article - Health - General

30 Section 10-634 through 10-645, inclusive, to be under the new part "Part VI.

31 Sexually Violent Predators"

32 Annotated Code of Maryland

33 (2000 Replacement Volume)

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

35 MARYLAND, That the Laws of Maryland read as follows:

**Article - Criminal Procedure**

1 11-701.

2 (e) (1) Except as otherwise provided in this subsection, "release" means any  
3 type of release from the custody of a supervising authority.

4 (2) "Release" includes:

5 (i) release on parole, mandatory supervision, and work release;  
6 [and]

7 (ii) except for leave that is granted on an emergency basis, any type  
8 of temporary leave; AND

9 (III) RELEASE FROM THE CUSTODY OF THE SECRETARY OF HEALTH  
10 AND MENTAL HYGIENE.

11 (3) "Release" does not include an escape.

12 (h) "Sexually violent predator" [means a person who:

13 (1) is convicted of a subsequent sexually violent offense; and

14 (2) has been determined in accordance with this subtitle to be at risk of  
15 committing another sexually violent offense] HAS THE MEANING STATED IN § 10-636  
16 OF THE HEALTH - GENERAL ARTICLE.

17 [11-703.

18 (a) (1) Subject to subsections (b) and (c) of this section, if a person is  
19 convicted of a subsequent sexually violent offense, the State's Attorney before  
20 sentencing may ask the court to determine whether the person is a sexually violent  
21 predator.

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

25 (b) In making a determination under subsection (a) of this section, the court  
26 shall consider:

27 (1) evidence that the court considers appropriate to the determination of  
28 whether the person is a sexually violent predator, including the presentencing  
29 investigation and sexually violent offender's inmate record;

30 (2) evidence introduced by the person convicted; and

31 (3) at the request of the State's Attorney, evidence that a victim of the  
32 sexually violent offense presents.

1 (c) The State's Attorney may not ask a court to determine whether a person is  
 2 a sexually violent predator under this section unless the State's Attorney serves  
 3 written notice of intent to make the request on the defendant or the defendant's  
 4 counsel at least 30 days before trial.]

5 11-718.1.

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

12 **Article - Health - General**

13 1-101.

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

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

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

17 10-101.

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

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

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

24 **PART VI. SEXUALLY VIOLENT PREDATORS.**

25 10-634.

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

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

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

32 (D) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED  
 33 CONDITION THAT AFFECTS EMOTIONAL OR VOLITIONAL CAPACITY TO PREDISPOSE A

1 PERSON TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A DEGREE THAT MAKES THE  
2 PERSON A MENACE TO THE HEALTH AND SAFETY OF OTHERS.

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

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

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

12 10-635.

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

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

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

20 (I) INCOMPETENT TO STAND TRIAL; OR

21 (II) NOT CRIMINALLY RESPONSIBLE.

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

25 10-636.

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

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

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

31 10-637.

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

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

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

5 (2) A MULTIDISCIPLINARY TEAM, TO BE APPOINTED BY THE  
6 COMMISSIONER FROM REPRESENTATIVES OF THE DEPARTMENT OF HEALTH AND  
7 MENTAL HYGIENE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
8 SERVICES.

9 10-638.

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

15 10-639.

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

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

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

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

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

28 10-640.

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

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

32 (C) (1) A DEFENDANT MAY RETAIN AN EXPERT TO PERFORM AN  
33 EXAMINATION.

34 (2) IF A DEFENDANT WISHES TO BE EXAMINED BY AN EXPERT OR OTHER  
35 INDIVIDUAL OF THE DEFENDANT'S CHOOSING, THE EXAMINER SHALL BE ALLOWED

1 TO HAVE REASONABLE ACCESS TO THE DEFENDANT AS WELL AS TO RELEVANT  
2 MEDICAL AND PSYCHOLOGICAL RECORDS AND REPORTS.

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

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

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

13 10-641.

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

19 10-642.

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

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

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

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

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

33 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH  
34 THE ANNUAL REPORT.

35 (3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO  
36 REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING,  
37 BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

1 10-643.

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

8 (2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED  
9 TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF  
10 EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §  
11 10-640 OF THIS SUBTITLE.

12 (3) THE ATTORNEY GENERAL:

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

14 (II) MAY REQUEST A JURY TRIAL; AND

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

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

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

22 (II) LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A  
23 SEXUALLY VIOLENT OFFENSE.

24 (B) THE COURT SHALL RELEASE A COMMITTED PERSON FROM CUSTODY IF  
25 THE COURT FINDS AT A RELEASE HEARING THAT THE STATE HAS NOT PROVEN  
26 BEYOND A REASONABLE DOUBT THAT THE COMMITTED PERSON IS NOT SAFE TO BE  
27 AT LARGE OR IS LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY  
28 VIOLENT OFFENSE IF DISCHARGED.

29 10-644.

30 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
31 INDICATED.

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

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

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

1 (C) A VICTIM OR DESIGNATED FAMILY MEMBER WHO HAS REQUESTED  
2 NOTIFICATION IN ACCORDANCE WITH REGULATIONS THAT THE ATTORNEY  
3 GENERAL ADOPTS SHALL BE PROMPTLY NOTIFIED IN WRITING WHEN THE COURT  
4 ORDERS:

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

7 (2) A STATUS REVIEW HEARING OR RELEASE HEARING FOR A  
8 COMMITTED PERSON; OR

9 (3) THE RELEASE OF A COMMITTED PERSON.

10 10-645.

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2001.