
By: ~~Delegates Zirkin, Quinter, and Simmons~~ Simmons, Shank, Kelly, McComas, McMillan, and O'Donnell

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CHAPTER _____

1 AN ACT concerning

2 ~~Sexually Violent Predators—Registration and Commitment to a State~~
 3 ~~Facility~~
 4 Sexual Offenders - Evaluation Before Sentencing

5 FOR the purpose of ~~altering the definition of a sexually violent predator; eliminating~~
 6 ~~certain provisions relating to sexually violent predators; creating a procedure in~~
 7 ~~which a person who has been convicted of or charged with a sexually violent~~
 8 ~~offense and who suffers from a certain mental abnormality or personality~~
 9 ~~disorder may be placed in the custody of the Secretary of Health and Mental~~
 10 ~~Hygiene until the person meets certain criteria; requiring the Commissioner of~~
 11 ~~Correction of the Department of Public Safety and Correctional Services to give~~
 12 ~~notice to the Attorney General before certain persons who have been convicted of~~
 13 ~~certain sexually violent offenses are released from confinement; requiring the~~
 14 ~~Attorney General to determine if certain persons meet the criteria of sexually~~
 15 ~~violent predators; establishing certain procedures for determining whether~~
 16 ~~persons are sexually violent predators; requiring that a review committee of~~
 17 ~~prosecutors and a multidisciplinary team be formed to make recommendations~~
 18 ~~concerning the identification of sexually violent predators; making the~~
 19 ~~Commissioner and certain other individuals immune from civil liability for acts~~
 20 ~~performed in good faith in carrying out this Act; specifying the criteria for~~
 21 ~~finding a person to be a sexually violent predator; authorizing the Attorney~~
 22 ~~General to petition the circuit court to find probable cause that a certain person~~
 23 ~~is a sexually violent predator; authorizing a court to order a person taken into~~
 24 ~~custody if the court determines certain probable cause exists; authorizing a~~
 25 ~~court to conduct a trial under certain circumstances to determine if a certain~~
 26 ~~person is a sexually violent predator; allowing a certain person certain rights at~~

1 trial; requiring that the standard of proof at a trial to determine whether a
 2 person is a sexually violent predator be that of proof beyond a reasonable doubt;
 3 requiring that a person who is found to be a sexually violent predator be placed
 4 in the custody of the Secretary of Health and Mental Hygiene for control, care,
 5 and treatment at a State facility until the mental abnormality or personality
 6 disorder of the person has so changed that the person is not likely to engage in
 7 a certain act if released; requiring that a certain committed person in a State
 8 facility be subject to an annual mental examination and an annual status review
 9 hearing; authorizing the court to determine at an annual status review hearing
 10 that probable cause exists to believe that the committed person is not likely to
 11 engage in certain acts if released; authorizing that a release hearing be held
 12 under certain circumstances; establishing the procedures for certain hearings;
 13 requiring that the court release a committed person under certain
 14 circumstances; providing that this Act has no effect on the operation of certain
 15 provisions of the Code; defining certain terms; and generally relating to the
 16 registration and commitment of sexually violent predators. requiring a court,
 17 unless there is a certain waiver, before sentencing a certain defendant, to order
 18 that the defendant submit to a presentence investigation conducted by the
 19 Division of Parole and Probation and a mental health evaluation conducted by a
 20 certain individual employed or engaged by the Department of Health and
 21 Mental Hygiene; requiring a court to consider the presentence investigation and
 22 mental health evaluation when sentencing the defendant; and generally
 23 relating to evaluation and sentencing of sexual offenders.

24 ~~BY repealing and reenacting, without amendments, adding to~~
 25 ~~Article - Criminal Procedure~~
 26 ~~Section 11-701(a) 11-722~~
 27 ~~Annotated Code of Maryland~~
 28 ~~(2001 Volume and 2005 Supplement)~~

29 ~~BY repealing and reenacting, with amendments,~~
 30 ~~Article - Criminal Procedure~~
 31 ~~Section 11-701(e) and (h)~~
 32 ~~Annotated Code of Maryland~~
 33 ~~(2001 Volume and 2005 Supplement)~~

34 ~~BY repealing~~
 35 ~~Article - Criminal Procedure~~
 36 ~~Section 11-703~~
 37 ~~Annotated Code of Maryland~~
 38 ~~(2001 Volume and 2005 Supplement)~~

39 ~~BY repealing and reenacting, without amendments,~~
 40 ~~Article - Health - General~~
 41 ~~Section 1-101(a), (c), and (j) and 10-101(e) and (h)~~
 42 ~~Annotated Code of Maryland~~

1 ~~(2005 Replacement Volume and 2005 Supplement)~~

2 ~~BY adding to~~

3 ~~Article Health General~~

4 ~~Section 10-634 through 10-644, inclusive, to be under the new part "Part VI.~~

5 ~~Sexually Violent Predators"~~

6 ~~Annotated Code of Maryland~~

7 ~~(2005 Replacement Volume and 2005 Supplement)~~

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

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

10 **Article - Criminal Procedure**

11 ~~11-701.~~

12 (a) ~~In this subtitle the following words have the meanings indicated.~~

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

15 (2) ~~"Release" means:~~

16 (i) ~~release on parole;~~

17 (ii) ~~mandatory supervision release;~~

18 (iii) ~~release from a correctional facility with no required period of~~
19 ~~supervision;~~

20 (iv) ~~work release;~~

21 (v) ~~placement on home detention; [and]~~

22 (vi) ~~the first instance of entry into the community that is part of a~~
23 ~~supervising authority's graduated release program; AND~~

24 (VII) ~~RELEASE FROM THE CUSTODY OF THE SECRETARY OF THE~~
25 ~~DEPARTMENT OF HEALTH AND MENTAL HYGIENE.~~

26 (3) ~~"Release" does not include:~~

27 (i) ~~an escape; or~~

28 (ii) ~~leave that is granted on an emergency basis.~~

29 (h) ~~"Sexually violent predator" means:~~

30 (1) ~~[a person who:~~

- 1 (i) is convicted of a sexually violent offense; and
 2 (ii) has been determined in accordance with this subtitle to be at
 3 risk of committing another sexually violent offense; or

4 (2)] a person who is or was required to register every 90 days for life
 5 under the laws of another state or a federal, military, or Native American tribal
 6 jurisdiction; OR

7 (2) A PERSON RELEASED FROM THE CUSTODY OF THE SECRETARY OF
 8 HEALTH AND MENTAL HYGIENE WHO MET THE CRITERIA SET FORTH IN § 10-636 OF
 9 THE HEALTH GENERAL ARTICLE.

10 ~~§ 11-703.~~

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

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

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

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

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

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

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

29 ~~Article—Health—General~~

30 ~~§ 1-101.~~

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

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

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

1 ~~10-101.~~

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

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

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

8 PART VI. SEXUALLY VIOLENT PREDATORS.

9 ~~10-634.~~

10 (A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

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

13 (C) "COMMITTED PERSON" MEANS A PERSON WHO HAS BEEN FOUND TO BE A
14 SEXUALLY VIOLENT PREDATOR UNDER § 10-636 OF THIS SUBTITLE AND HAS BEEN
15 COMMITTED TO A STATE FACILITY.

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

20 (E) "PREDATORY ACT" MEANS AN ACT DIRECTED TOWARD:

21 (1) A STRANGER; OR

22 (2) AN INDIVIDUAL WITH WHOM A RELATIONSHIP HAS BEEN
23 ESTABLISHED OR PROMOTED FOR THE PRIMARY PURPOSE OF VICTIMIZATION.

24 (F) "SEXUALLY VIOLENT OFFENSE" HAS THE MEANING STATED IN § 11-701(G)
25 OF THE CRIMINAL PROCEDURE ARTICLE.

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

28 ~~10-635.~~

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

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

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

3 (I) ~~INCOMPETENT TO STAND TRIAL; OR~~

4 (II) ~~NOT CRIMINALLY RESPONSIBLE.~~

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

8 40-636.

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

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

11 (2) ~~SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY~~
12 ~~DISORDER, AS DETERMINED UNDER § 10-637 OF THIS SUBTITLE, THAT MAKES THE~~
13 ~~PERSON LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT~~
14 ~~OFFENSE.~~

15 40-637.

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

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

21 (1) ~~A REVIEW COMMITTEE OF PROSECUTORS, TO BE APPOINTED BY THE~~
22 ~~ATTORNEY GENERAL; AND~~

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

27 40-638.

28 ~~THE COMMISSIONER, EMPLOYEES AND OFFICIALS OF THE DIVISION OF~~
29 ~~CORRECTION, MEMBERS AND STAFF OF THE MULTIDISCIPLINARY TEAM AND THE~~
30 ~~REVIEW COMMITTEE OF PROSECUTORS, AND PERSONS WHO CONTRACT OR~~
31 ~~VOLUNTEER FOR THE SERVICES ARE NOT CIVILLY LIABLE FOR ACTS PERFORMED IN~~
32 ~~GOOD FAITH IN CARRYING OUT THIS PART.~~

33 40-639.

34 ~~(A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES WRITTEN~~
35 ~~NOTICE FROM THE COMMISSIONER UNDER § 10-635 OF THIS SUBTITLE, THE~~

1 ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO FIND THAT PROBABLE
2 CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A
3 SEXUALLY VIOLENT PREDATOR.

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

5 (1) DIRECT THAT THE PERSON BE TAKEN INTO THE CUSTODY OF THE
6 SECRETARY; AND

7 (2) CONDUCT A TRIAL WITHIN 60 DAYS AFTER THE DATE OF THE
8 PROBABLE CAUSE HEARING TO DETERMINE THE STATUS OF THE PERSON AS A
9 SEXUALLY VIOLENT PREDATOR.

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

14 10-640.

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

17 (B) IF THE PERSON NAMED IN THE PETITION IS INDIGENT, THE COURT SHALL
18 APPOINT COUNSEL.

19 (C) (1) A PERSON NAMED IN THE PETITION MAY RETAIN AN EXPERT TO
20 PERFORM AN EXAMINATION.

21 (2) IF A PERSON NAMED IN THE PETITION WISHES TO BE EXAMINED BY
22 AN EXPERT OR OTHER INDIVIDUAL CHOSEN BY THE PERSON, THE EXAMINER SHALL
23 BE ALLOWED TO HAVE REASONABLE ACCESS TO THE PERSON AS WELL AS TO
24 RELEVANT MEDICAL AND PSYCHOLOGICAL RECORDS AND REPORTS.

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

30 (D) THE PERSON NAMED IN THE PETITION, THE ATTORNEY GENERAL, AND
31 THE JUDGE ARE ENTITLED TO DEMAND THAT THE TRIAL BE BEFORE A JURY.

32 (E) AT A TRIAL UNDER THIS SECTION, THE STATE HAS THE BURDEN OF
33 PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON NAMED IN THE
34 PETITION IS A SEXUALLY VIOLENT PREDATOR.

1 ~~40-641.~~

2 ~~IF THE COURT OR JURY DETERMINES THAT A PERSON IS A SEXUALLY VIOLENT~~
3 ~~PREDATOR, THE PERSON SHALL BE PLACED IN THE CUSTODY OF THE SECRETARY~~
4 ~~FOR CONTROL, CARE, AND TREATMENT AT A STATE FACILITY UNTIL THE MENTAL~~
5 ~~ABNORMALITY OR PERSONALITY DISORDER OF THE PERSON HAS SO CHANGED THAT~~
6 ~~THE PERSON IS NOT LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A~~
7 ~~SEXUALLY VIOLENT OFFENSE IF RELEASED.~~

8 ~~40-642.~~

9 ~~(A) (1) A COMMITTED PERSON IS SUBJECT TO AN ANNUAL MENTAL~~
10 ~~EXAMINATION IN A STATE FACILITY.~~

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

15 ~~(B) THE COURT SHALL CONDUCT AN ANNUAL STATUS REVIEW HEARING FOR~~
16 ~~EACH COMMITTED PERSON.~~

17 ~~(C) A COMMITTED PERSON SHALL BE ENTITLED TO PETITION THE COURT FOR~~
18 ~~DISCHARGE AT THE ANNUAL STATUS REVIEW HEARING OF THE COMMITTED~~
19 ~~PERSON.~~

20 ~~(D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED PERSON WITH AN~~
21 ~~ANNUAL WRITTEN NOTICE OF THE RIGHT OF THE COMMITTED PERSON TO PETITION~~
22 ~~THE COURT FOR RELEASE.~~

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

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

28 ~~40-643.~~

29 ~~(A) (1) THE COURT SHALL SET A RELEASE HEARING IF THE COURT AT THE~~
30 ~~ANNUAL STATUS REVIEW HEARING DETERMINES THAT PROBABLE CAUSE EXISTS TO~~
31 ~~BELIEVE THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE~~
32 ~~COMMITTED PERSON HAS CHANGED SO THAT THE COMMITTED PERSON IS NOT~~
33 ~~LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT~~
34 ~~OFFENSE IF RELEASED.~~

35 ~~(2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED~~
36 ~~TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF~~
37 ~~EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §~~
38 ~~40-640 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 PERSON BE EVALUATED~~
5 ~~BY EXPERTS CHOSEN BY THE STATE.~~

6 (4) ~~THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE~~
7 ~~DOUBT THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE~~
8 ~~COMMITTED PERSON REMAINS SO SEVERE AS TO MAKE THE COMMITTED PERSON~~
9 ~~LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT~~
10 ~~OFFENSE IF RELEASED.~~

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

16 ~~40-644.~~

17 ~~THIS PART DOES NOT AFFECT THE OPERATION OF TITLE 11, SUBTITLE 7 OF THE~~
18 ~~CRIMINAL PROCEDURE ARTICLE.~~

19 ~~11-722.~~

20 (A) ~~UNLESS WAIVED BY THE STATE'S ATTORNEY AND DEFENSE COUNSEL,~~
21 ~~BEFORE SENTENCING A DEFENDANT WHO HAS BEEN CONVICTED OF A CRIME FOR~~
22 ~~WHICH THE DEFENDANT IS REQUIRED TO REGISTER UNDER § 11-704 OF THIS~~
23 ~~SUBTITLE, THE COURT SHALL ORDER THE DEFENDANT TO SUBMIT TO:~~

24 (1) ~~A PRESENTENCE INVESTIGATION CONDUCTED BY THE DIVISION OF~~
25 ~~PAROLE AND PROBATION; AND~~

26 (2) ~~A MENTAL HEALTH ASSESSMENT, INCLUDING WHETHER THE~~
27 ~~DEFENDANT IS A DANGER TO SELF OR OTHERS, CONDUCTED BY A QUALIFIED~~
28 ~~MENTAL HEALTH PROFESSIONAL EMPLOYED OR ENGAGED BY THE DEPARTMENT OF~~
29 ~~HEALTH AND MENTAL HYGIENE.~~

30 (B) ~~THE COURT SHALL CONSIDER THE PRESENTENCE INVESTIGATION AND~~
31 ~~MENTAL HEALTH EVALUATION WHEN SENTENCING THE DEFENDANT.~~

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2006.

