

(PRE-FILED)

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By: **Senator Stone**

Requested: September 14, 2005

Introduced and read first time: January 11, 2006

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Sexually Violent Predators - Registration and Commitment to a State**  
3 **Facility**

4 FOR the purpose of altering the definition of a sexually violent predator; eliminating  
5 certain provisions relating to sexually violent predators; creating a procedure in  
6 which a person who has been convicted of or charged with a sexually violent  
7 offense and who suffers from a certain mental abnormality or personality  
8 disorder may be placed in the custody of the Secretary of Health and Mental  
9 Hygiene until the person meets certain criteria; requiring the Commissioner of  
10 Correction of the Department of Public Safety and Correctional Services to give  
11 notice to the Attorney General before certain persons who have been convicted of  
12 certain sexually violent offenses are released from confinement; requiring the  
13 Attorney General to determine if certain persons meet the criteria of sexually  
14 violent predators; establishing certain procedures for determining whether  
15 persons are sexually violent predators; requiring that a review committee of  
16 prosecutors and a multidisciplinary team be formed to make recommendations  
17 concerning the identification of sexually violent predators; making the  
18 Commissioner and certain other individuals immune from civil liability for acts  
19 performed in good faith in carrying out this Act; specifying the criteria for  
20 finding a person to be a sexually violent predator; authorizing the Attorney  
21 General to petition the circuit court to find probable cause that a certain person  
22 is a sexually violent predator; authorizing a court to order a person taken into  
23 custody if the court determines certain probable cause exists; authorizing a  
24 court to conduct a trial under certain circumstances to determine if a certain  
25 person is a sexually violent predator; allowing a certain person certain rights at  
26 trial; requiring that the standard of proof at a trial to determine whether a  
27 person is a sexually violent predator be that of proof beyond a reasonable doubt;  
28 requiring that a person who is found to be a sexually violent predator be placed  
29 in the custody of the Secretary of Health and Mental Hygiene for control, care,  
30 and treatment at a State facility until the mental abnormality or personality  
31 disorder of the person has so changed that the person is not likely to engage in  
32 a certain act if released; requiring that a certain committed person in a State  
33 facility be subject to an annual mental examination and an annual status review  
34 hearing; authorizing the court to determine at an annual status review hearing

1 that probable cause exists to believe that the committed person is not likely to  
2 engage in certain acts if released; authorizing that a release hearing be held  
3 under certain circumstances; establishing the procedures for certain hearings;  
4 requiring that the court release a committed person under certain  
5 circumstances; providing that this Act has no effect on the operation of certain  
6 provisions of the Code; defining certain terms; and generally relating to the  
7 registration and commitment of sexually violent predators.

8 BY repealing and reenacting, without amendments,  
9 Article - Criminal Procedure  
10 Section 11-701(a)  
11 Annotated Code of Maryland  
12 (2001 Volume and 2005 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Criminal Procedure  
15 Section 11-701(e) and (h)  
16 Annotated Code of Maryland  
17 (2001 Volume and 2005 Supplement)

18 BY repealing  
19 Article - Criminal Procedure  
20 Section 11-703  
21 Annotated Code of Maryland  
22 (2001 Volume and 2005 Supplement)

23 BY repealing and reenacting, without amendments,  
24 Article - Health - General  
25 Section 1-101(a), (c), and (j) and 10-101(e) and (h)  
26 Annotated Code of Maryland  
27 (2005 Replacement Volume and 2005 Supplement)

28 BY adding to  
29 Article - Health - General  
30 Section 10-634 through 10-644, inclusive, to be under the new part "Part VI.  
31 Sexually Violent Predators"  
32 Annotated Code of Maryland  
33 (2005 Replacement Volume and 2005 Supplement)

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

1

**Article - Criminal Procedure**

2 11-701.

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

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

6 (2) "Release" means:

7 (i) release on parole;

8 (ii) mandatory supervision release;

9 (iii) release from a correctional facility with no required period of  
10 supervision;

11 (iv) work release;

12 (v) placement on home detention; [and]

13 (vi) the first instance of entry into the community that is part of a  
14 supervising authority's graduated release program; AND15 (VII) RELEASE FROM THE CUSTODY OF THE SECRETARY OF THE  
16 DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

17 (3) "Release" does not include:

18 (i) an escape; or

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

20 (h) "Sexually violent predator" means:

21 (1) [a person who:

22 (i) is convicted of a sexually violent offense; and

23 (ii) has been determined in accordance with this subtitle to be at  
24 risk of committing another sexually violent offense; or25 (2)] a person who is or was required to register every 90 days for life  
26 under the laws of another state or a federal, military, or Native American tribal  
27 jurisdiction; OR28 (2) A PERSON RELEASED FROM THE CUSTODY OF THE SECRETARY OF  
29 HEALTH AND MENTAL HYGIENE WHO MET THE CRITERIA SET FORTH IN § 10-636 OF  
30 THE HEALTH - GENERAL ARTICLE.

1 [11-703.

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

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

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

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

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

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

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

20

#### **Article - Health - General**

21 1-101.

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

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

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

25 10-101.

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

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

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

## PART VI. SEXUALLY VIOLENT PREDATORS.

10-634.

(A) IN THIS PART 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 UNDER § 10-636 OF THIS SUBTITLE 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:

(1) A STRANGER; OR

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

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

(G) "SEXUALLY VIOLENT PREDATOR" HAS THE MEANING STATED 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 ANTICIPATED 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 POSTRELEASE SUPERVISION, THE COMMISSIONER SHALL GIVE 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, AS DETERMINED UNDER § 10-637 OF THIS SUBTITLE, THAT MAKES THE  
6 PERSON LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT  
7 OFFENSE.

8 10-637.

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

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

14 (1) A REVIEW COMMITTEE OF PROSECUTORS, TO BE APPOINTED BY THE  
15 ATTORNEY GENERAL; AND

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

20 10-638.

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

26 10-639.

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

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

33 (1) DIRECT THAT THE PERSON BE TAKEN INTO THE CUSTODY OF THE  
34 SECRETARY; AND

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

4     (C)     THE PERSON NAMED IN THE PETITION SHALL BE ENTITLED TO BE  
5 REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE  
6 WITNESSES, AND TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE COURT  
7 FILE.

8 10-640.

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

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

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

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

19           (3)     THE COURT SHALL ASSIST AN INDIGENT PERSON TO OBTAIN AN  
20 EXPERT OR OTHER INDIVIDUAL TO PERFORM AN EXAMINATION OR PARTICIPATE IN  
21 THE TRIAL ON THE BEHALF OF THE PERSON IF THE COURT DETERMINES THE  
22 SERVICES ARE NECESSARY AND THE REQUESTED COMPENSATION FOR THE  
23 SERVICES IS REASONABLE.

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

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

29 10-641.

30     IF THE COURT OR JURY DETERMINES THAT A PERSON IS A SEXUALLY VIOLENT  
31 PREDATOR, THE PERSON SHALL BE PLACED IN THE CUSTODY OF THE SECRETARY  
32 FOR CONTROL, CARE, AND TREATMENT AT A STATE FACILITY UNTIL THE MENTAL  
33 ABNORMALITY OR PERSONALITY DISORDER OF THE PERSON HAS SO CHANGED THAT  
34 THE PERSON IS NOT LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A  
35 SEXUALLY VIOLENT OFFENSE IF RELEASED.

1 10-642.

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

4 (2) AN OFFICIAL DESIGNATED BY THE HEAD OF THE STATE FACILITY  
5 SHALL COMPLETE A REPORT OF THE MENTAL EXAMINATION AND SHALL FILE A  
6 COPY OF THE REPORT WITH THE COURT THAT ORDERED THE COMMITTED PERSON  
7 TO A STATE FACILITY UNDER THIS PART.

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

10 (C) A COMMITTED PERSON SHALL BE ENTITLED TO PETITION THE COURT FOR  
11 DISCHARGE AT THE ANNUAL STATUS REVIEW HEARING OF THE COMMITTED  
12 PERSON.

13 (D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED PERSON WITH AN  
14 ANNUAL WRITTEN NOTICE OF THE RIGHT OF THE COMMITTED PERSON TO PETITION  
15 THE COURT FOR RELEASE.

16 (2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH  
17 THE ANNUAL REPORT.

18 (3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO  
19 REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING,  
20 BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

21 10-643.

22 (A) (1) THE COURT SHALL SET A RELEASE HEARING IF THE COURT AT THE  
23 ANNUAL STATUS REVIEW HEARING DETERMINES THAT PROBABLE CAUSE EXISTS TO  
24 BELIEVE THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE  
25 COMMITTED PERSON HAS CHANGED SO THAT THE COMMITTED PERSON IS NOT  
26 LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT  
27 OFFENSE IF RELEASED.

28 (2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED  
29 TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF  
30 EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER §  
31 10-640 OF THIS SUBTITLE.

32 (3) THE ATTORNEY GENERAL:

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

34 (II) MAY REQUEST A JURY TRIAL; AND

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



1           (4)     THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE  
2 DOUBT THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE  
3 COMMITTED PERSON REMAINS SO SEVERE AS TO MAKE THE COMMITTED PERSON  
4 LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT  
5 OFFENSE IF RELEASED.

6           (B)     THE COURT SHALL RELEASE A COMMITTED PERSON FROM CUSTODY IF  
7 THE COURT FINDS AT A RELEASE HEARING THAT THE STATE HAS NOT PROVEN  
8 BEYOND A REASONABLE DOUBT THAT THE COMMITTED PERSON IS NOT SAFE TO BE  
9 AT LARGE OR IS LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY  
10 VIOLENT OFFENSE IF RELEASED.

11 10-644.

12       THIS PART DOES NOT AFFECT THE OPERATION OF TITLE 11, SUBTITLE 7 OF THE  
13 CRIMINAL PROCEDURE ARTICLE.

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