

# SENATE BILL 405

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By: **Senators Stone, DeGrange, Haines, Jacobs, Mooney, Peters, Robey, and Simonaire**

Introduced and read first time: January 29, 2010

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Sexually Violent Offender in Need of Commitment**

3 FOR the purpose of creating a procedure in which a person who has been convicted of  
4 a sexually violent offense and who suffers from a certain mental abnormality or  
5 personality disorder may be placed in the custody of the Secretary of Health and  
6 Mental Hygiene until the person meets certain criteria; establishing that a term  
7 of extended parole supervision commences on the expiration of a certain term of  
8 commitment to a certain State facility; requiring the Commissioner of  
9 Correction of the Department of Public Safety and Correctional Services to give  
10 notice to the Attorney General before certain persons who have been convicted  
11 of certain sexually violent offenses are released from confinement; requiring the  
12 Attorney General to determine if certain persons meet the criteria of sexually  
13 violent offenders in need of commitment; establishing certain procedures for  
14 determining whether persons are sexually violent offenders in need of  
15 commitment; requiring that a review committee of prosecutors and a  
16 multidisciplinary team be formed to make recommendations concerning the  
17 identification of sexually violent offenders in need of commitment; 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 offender in need of commitment;  
21 authorizing the Attorney General to petition the circuit court to find probable  
22 cause that a certain person is a sexually violent offender in need of  
23 commitment; authorizing a court to order a certain person taken into custody if  
24 the court determines certain probable cause exists; authorizing a court to  
25 conduct a trial under certain circumstances to determine if a certain person is a  
26 sexually violent offender in need of commitment; allowing a certain person  
27 certain rights at trial; requiring that the standard of proof at a trial to  
28 determine whether a person is a sexually violent offender in need of  
29 commitment be that of proof beyond a reasonable doubt; requiring that a person  
30 who is found to be a sexually violent offender in need of commitment be placed

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 in the custody of the Secretary of Health and Mental Hygiene for control, care,  
 2 and treatment at a State facility until the mental abnormality or personality  
 3 disorder of the person has so changed that the person is not likely to engage in a  
 4 certain act if released; requiring that a certain committed person in a State  
 5 facility be subject to an annual mental examination and an annual status  
 6 review hearing; authorizing the court to determine at an annual status review  
 7 hearing that probable cause exists to believe that the committed person is not  
 8 likely to engage in certain acts if released; authorizing that a release hearing be  
 9 held under certain circumstances; establishing the procedures for certain  
 10 hearings; requiring that the court release a committed person under certain  
 11 circumstances; providing that this Act has no effect on the operation of certain  
 12 provisions of the Code; defining certain terms; and generally relating to sexually  
 13 violent offenders in need of commitment.

14 BY repealing and reenacting, without amendments,  
 15 Article – Criminal Procedure  
 16 Section 11–701(a), (f), (j), (k), and (m)  
 17 Annotated Code of Maryland  
 18 (2008 Replacement Volume and 2009 Supplement)

19 BY repealing and reenacting, with amendments,  
 20 Article – Criminal Procedure  
 21 Section 11–701(i) and 11–723  
 22 Annotated Code of Maryland  
 23 (2008 Replacement Volume and 2009 Supplement)

24 BY repealing and reenacting, without amendments,  
 25 Article – Health – General  
 26 Section 1–101(a), (c), and (k) and 10–101(e) and (h)  
 27 Annotated Code of Maryland  
 28 (2009 Replacement Volume)

29 BY adding to  
 30 Article – Health – General  
 31 Section 10–636 through 10–646 to be under the new part “Part VI. Sexually  
 32 Violent Offender in Need of Commitment”  
 33 Annotated Code of Maryland  
 34 (2009 Replacement Volume)

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

37 **Article – Criminal Procedure**

38 11–701.

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

1 (f) “Extended parole supervision offender” means a person who:

2 (1) is a sexually violent predator;

3 (2) has been convicted of a violation of § 3–303, § 3–304, § 3–305, §  
4 3–306(a)(1) or (2), or § 3–307(a)(1) or (2) of the Criminal Law Article;

5 (3) has been convicted of a violation of § 3–309, § 3–310, or § 3–311 of  
6 the Criminal Law Article or an attempt to commit a violation of § 3–306(a)(1) or (2) of  
7 the Criminal Law Article;

8 (4) has been convicted of a violation of § 3–602 of the Criminal Law  
9 Article for commission of a sexual act involving penetration of a child under the age of  
10 12 years; or

11 (5) has been convicted more than once of a crime as a child sexual  
12 offender, an offender, or a sexually violent offender.

13 (i) (1) Except as otherwise provided in this subsection, “release” means  
14 any 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  
23 a supervising authority’s graduated release program; AND

24 **(VII) RELEASE FROM THE CUSTODY OF THE SECRETARY OF**  
25 **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 (j) “Sexually violent offender” means a person who:

- 1           (1)    has been convicted of a sexually violent offense;
- 2           (2)    has been convicted of an attempt to commit a sexually violent  
3 offense; or
- 4           (3)    (i)    has been adjudicated delinquent for an act involving a  
5 victim 15 years of age or older that would constitute a violation of § 3–303, § 3–304, §  
6 3–305, or § 3–306 of the Criminal Law Article if committed by an adult; and
- 7                   (ii)    meets the requirements for registration under § 11–704(c) of  
8 this subtitle.
- 9           (k)    “Sexually violent offense” means:
- 10           (1)    a violation of §§ 3–303 through 3–307 or §§ 3–309 through 3–312 of  
11 the Criminal Law Article;
- 12           (2)    assault with intent to commit rape in the first or second degree or  
13 a sexual offense in the first or second degree as prohibited on or before September 30,  
14 1996, under former Article 27, § 12 of the Code; or
- 15           (3)    a crime committed in another state or in a federal, military, or  
16 Native American tribal jurisdiction that, if committed in this State, would constitute  
17 one of the crimes listed in item (1) or (2) of this subsection.
- 18           (m)    “Supervising authority” means:
- 19           (1)    the Secretary, if the registrant is in the custody of a correctional  
20 facility operated by the Department;
- 21           (2)    the administrator of a local correctional facility, if the registrant,  
22 including a participant in a home detention program, is in the custody of the local  
23 correctional facility;
- 24           (3)    the court that granted the probation or suspended sentence, except  
25 as provided in item (12) of this subsection, if the registrant is granted probation before  
26 judgment, probation after judgment, or a suspended sentence;
- 27           (4)    the Director of the Patuxent Institution, if the registrant is in the  
28 custody of the Patuxent Institution;
- 29           (5)    the Secretary of Health and Mental Hygiene, if the registrant is in  
30 the custody of a facility operated by the Department of Health and Mental Hygiene;
- 31           (6)    the court in which the registrant was convicted, if the registrant’s  
32 sentence does not include a term of imprisonment or if the sentence is modified to time  
33 served;

1 (7) the Secretary, if the registrant is in the State under terms and  
2 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title  
3 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections  
4 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

5 (8) the Secretary, if the registrant moves to this State and was  
6 convicted in another state of a crime that would require the registrant to register if the  
7 crime was committed in this State;

8 (9) the Secretary, if the registrant moves to this State from another  
9 state where the registrant was required to register;

10 (10) the Secretary, if the registrant is convicted in a federal, military, or  
11 Native American tribal court and is not under supervision by another supervising  
12 authority;

13 (11) the Secretary, if the registrant is not a resident of this State and  
14 has been convicted in another state or by a federal, military, or Native American tribal  
15 court;

16 (12) the Director of Parole and Probation, if the registrant is under the  
17 supervision of the Division of Parole and Probation; or

18 (13) the Secretary of Juvenile Services, if the registrant was a minor at  
19 the time the act was committed for which registration is required.

20 11-723.

21 (a) Except where a term of natural life without the possibility of parole is  
22 imposed, a sentence for an extended parole supervision offender shall include a term of  
23 extended sexual offender parole supervision.

24 (b) The term of extended sexual offender parole supervision for a defendant  
25 sentenced on or after August 1, 2006, shall:

26 (1) be a minimum of 3 years to a maximum of a term of life; and

27 (2) commence on the expiration of the later of any term of  
28 imprisonment, probation, parole, [or] mandatory supervision, **OR COMMITMENT TO A**  
29 **FACILITY OWNED AND OPERATED BY THE DEPARTMENT OF HEALTH AND**  
30 **MENTAL HYGIENE IN ACCORDANCE WITH § 10-641 OF THE HEALTH – GENERAL**  
31 **ARTICLE.**

32 **Article – Health – General**

33 1-101.

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

2 (c) “Department” means the Department of Health and Mental Hygiene.

3 (k) “Secretary” means the Secretary of Health and Mental Hygiene.

4 10–101.

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

8 (2) “Facility” does not include a Veterans’ Administration hospital.

9 (h) “State facility” means a facility that is owned or operated by the  
10 Department.

11 **10–634. RESERVED.**

12 **10–635. RESERVED.**

13 **PART VI. SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.**

14 **10–636.**

15 (A) **IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS**  
16 **INDICATED.**

17 (B) **“COMMISSIONER” MEANS THE COMMISSIONER OF CORRECTION OF**  
18 **THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

19 (C) **“COMMITTED PERSON” MEANS A PERSON WHO HAS BEEN FOUND TO**  
20 **BE A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT UNDER § 10–638**  
21 **OF THIS SUBTITLE AND HAS BEEN COMMITTED TO A STATE FACILITY.**

22 (D) **“MENTAL ABNORMALITY” MEANS A CONGENITAL OR ACQUIRED**  
23 **CONDITION THAT AFFECTS EMOTIONAL OR VOLITIONAL CAPACITY TO**  
24 **PREDISPOSE A PERSON TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A**  
25 **DEGREE THAT MAKES THE PERSON A MENACE TO THE HEALTH AND SAFETY OF**  
26 **OTHERS.**

27 (E) **“PREDATORY ACT” MEANS AN ACT DIRECTED TOWARD:**

28 (1) **A STRANGER; OR**

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

3           **(F) “SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT” MEANS**  
4 **A SEXUALLY VIOLENT OFFENDER WHO IS PLACED IN THE CUSTODY OF THE**  
5 **SECRETARY IN ACCORDANCE WITH § 10-643 OF THIS SUBTITLE.**

6           **(G) “SEXUALLY VIOLENT OFFENSE” HAS THE MEANING STATED IN §**  
7 **11-701(K) OF THE CRIMINAL PROCEDURE ARTICLE.**

8 **10-637.**

9           **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE**  
10 **COMMISSIONER SHALL GIVE WRITTEN NOTICE TO THE ATTORNEY GENERAL AT**  
11 **LEAST 90 DAYS BEFORE THE ANTICIPATED RELEASE FROM A CORRECTIONAL**  
12 **FACILITY OF A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT**  
13 **OFFENSE.**

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

18 **10-638.**

19           **A PERSON IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT**  
20 **IF THE PERSON:**

21           **(1) HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE;**  
22 **AND**

23           **(2) SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY**  
24 **DISORDER, AS DETERMINED UNDER § 10-639 OF THIS SUBTITLE, THAT MAKES**  
25 **THE PERSON LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY**  
26 **VIOLENT OFFENSE.**

27 **10-639.**

28           **(A) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER A PERSON**  
29 **ABOUT WHOM THE COMMISSIONER GIVES NOTICE UNDER § 10-637 OF THIS**  
30 **SUBTITLE MEETS THE CRITERIA OF A SEXUALLY VIOLENT OFFENDER IN NEED**  
31 **OF COMMITMENT.**

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

3           **(1) A REVIEW COMMITTEE OF PROSECUTORS, TO BE APPOINTED**  
4 **BY THE ATTORNEY GENERAL; AND**

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

9 **10-640.**

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

15 **10-641.**

16           **(A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES**  
17 **WRITTEN NOTICE FROM THE COMMISSIONER UNDER § 10-637 OF THIS**  
18 **SUBTITLE, THE ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO**  
19 **FIND THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN**  
20 **THE PETITION IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.**

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

22           **(1) DIRECT THAT THE PERSON BE TAKEN INTO THE CUSTODY OF**  
23 **THE SECRETARY; AND**

24           **(2) CONDUCT A TRIAL WITHIN 60 DAYS AFTER THE DATE OF THE**  
25 **PROBABLE CAUSE HEARING TO DETERMINE THE STATUS OF THE PERSON AS A**  
26 **SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.**

27           **(C) THE PERSON NAMED IN THE PETITION SHALL BE ENTITLED TO BE**  
28 **REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE**  
29 **WITNESSES, AND TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE**  
30 **COURT FILE.**

31 **10-642.**



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

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

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

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

12                   (3) THE COURT SHALL ASSIST AN INDIGENT PERSON TO OBTAIN  
13 AN EXPERT OR OTHER INDIVIDUAL TO PERFORM AN EXAMINATION OR  
14 PARTICIPATE IN THE TRIAL ON THE BEHALF OF THE PERSON IF THE COURT  
15 DETERMINES THE SERVICES ARE NECESSARY AND THE REQUESTED  
16 COMPENSATION FOR THE SERVICES IS REASONABLE.

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

20           (E) AT A TRIAL UNDER THIS SECTION, THE STATE HAS THE BURDEN OF  
21 PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON NAMED IN THE  
22 PETITION IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.

23 **10-643.**

24           IF THE COURT OR JURY DETERMINES THAT A PERSON IS A SEXUALLY  
25 VIOLENT OFFENDER IN NEED OF COMMITMENT, THE PERSON SHALL BE PLACED  
26 IN THE CUSTODY OF THE SECRETARY FOR CONTROL, CARE, AND TREATMENT AT  
27 A STATE FACILITY UNTIL THE MENTAL ABNORMALITY OR PERSONALITY  
28 DISORDER OF THE PERSON HAS SO CHANGED THAT THE PERSON IS NOT LIKELY  
29 TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE IF  
30 RELEASED.

31 **10-644.**

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

1           **(2) AN OFFICIAL DESIGNATED BY THE PERSON IN CHARGE OF**  
2 **THE STATE FACILITY SHALL COMPLETE A REPORT OF THE MENTAL**  
3 **EXAMINATION AND SHALL FILE A COPY OF THE REPORT WITH THE COURT THAT**  
4 **ORDERED THE COMMITTED PERSON TO A STATE FACILITY UNDER THIS PART.**

5           **(B) THE COURT SHALL CONDUCT AN ANNUAL STATUS REVIEW HEARING**  
6 **FOR EACH COMMITTED PERSON.**

7           **(C) A COMMITTED PERSON SHALL BE ENTITLED TO PETITION THE**  
8 **COURT FOR DISCHARGE AT THE ANNUAL STATUS REVIEW HEARING OF THE**  
9 **COMMITTED PERSON.**

10           **(D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED PERSON**  
11 **WITH AN ANNUAL WRITTEN NOTICE OF THE RIGHT OF THE COMMITTED PERSON**  
12 **TO PETITION THE COURT FOR RELEASE.**

13           **(2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE**  
14 **COURT WITH THE ANNUAL REPORT.**

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

19 **10-645.**

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

26           **(2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS**  
27 **ENTITLED TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING**  
28 **THE USE OF EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL**  
29 **HEARING UNDER § 10-642 OF THIS SUBTITLE.**

30           **(3) THE ATTORNEY GENERAL:**

31                   **(I) SHALL REPRESENT THE STATE AT THE RELEASE**  
32 **HEARING;**

33                   **(II) MAY REQUEST A JURY TRIAL; AND**

1                   **(III) MAY REQUEST THAT THE COMMITTED PERSON BE**  
2 **EVALUATED BY EXPERTS CHOSEN BY THE STATE.**

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

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

13 **10-646.**

14                   **THIS PART DOES NOT AFFECT THE OPERATION OF TITLE 11, SUBTITLE 7**  
15 **OF THE CRIMINAL PROCEDURE ARTICLE.**

16                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2010.