

SENATE BILL 533

D3, E4
SB 405/10 – JPR

11r1252

By: **Senators Stone, DeGrange, Jacobs, Robey, and Simonaire**
Introduced and read first time: February 4, 2011
Assigned to: Judicial Proceedings

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 by which a person who has been convicted of
4 a sexually violent offense, who suffers from a certain mental abnormality or
5 personality disorder, and who is determined to be in need of commitment to a
6 State facility may be placed in the custody of the Secretary of Health and
7 Mental Hygiene until a certain court determination is made; establishing that a
8 term of extended parole supervision commences on the expiration of a certain
9 term of commitment to a certain State facility; 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
12 of 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 offenders in need of commitment; establishing certain procedures for
15 determining whether persons are sexually violent offenders in need of
16 commitment; requiring that a review committee of prosecutors and a
17 multidisciplinary team be formed to make recommendations concerning the
18 identification of sexually violent offenders in need of commitment; 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 offender in need of commitment;
22 authorizing the Attorney General to petition the circuit court to find probable
23 cause that a certain person is a sexually violent offender in need of
24 commitment; authorizing a court to order a certain person taken into custody if
25 the court determines certain probable cause exists; authorizing a court to
26 conduct a trial under certain circumstances to determine if a certain person is a
27 sexually violent offender in need of commitment; allowing a certain person
28 certain rights at trial; requiring that the standard of proof at a trial to
29 determine whether a person is a sexually violent offender in need of
30 commitment be that of proof beyond a reasonable doubt; requiring that a person
31 who is found to be a sexually violent offender in need of commitment be placed

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; providing for a delayed effective date; defining certain
 13 terms; and generally relating to sexually violent offenders in need of
 14 commitment.

15 BY repealing and reenacting, without amendments,
 16 Article – Criminal Procedure
 17 Section 11–701(a), (j), and (n)
 18 Annotated Code of Maryland
 19 (2008 Replacement Volume and 2010 Supplement)

20 BY repealing and reenacting, with amendments,
 21 Article – Criminal Procedure
 22 Section 11–701(i) and 11–723(c)(1)
 23 Annotated Code of Maryland
 24 (2008 Replacement Volume and 2010 Supplement)

25 BY repealing and reenacting, without amendments,
 26 Article – Health – General
 27 Section 1–101(a), (c), and (k) and 10–101(e) and (h)
 28 Annotated Code of Maryland
 29 (2009 Replacement Volume and 2010 Supplement)

30 BY adding to
 31 Article – Health – General
 32 Section 10–636 through 10–646 to be under the new part “Part VI. Sexually
 33 Violent Offender in Need of Commitment”
 34 Annotated Code of Maryland
 35 (2009 Replacement Volume and 2010 Supplement)

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

38 **Article – Criminal Procedure**

39 11–701.

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

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

3 (2) “Release” means:

4 (i) release on parole;

5 (ii) mandatory supervision release;

6 (iii) release from a correctional facility with no required period of
7 supervision;

8 (iv) work release;

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

10 (vi) the first instance of entry into the community that is part of
11 a supervising authority’s graduated release program; AND

12 (VII) RELEASE FROM THE CUSTODY OF THE SECRETARY OF
13 HEALTH AND MENTAL HYGIENE.

14 (3) “Release” does not include:

15 (i) an escape; or

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

17 (j) “Sexually violent offense” means:

18 (1) a violation of §§ 3–303 through 3–307 or §§ 3–309 through 3–312 of
19 the Criminal Law Article;

20 (2) assault with intent to commit rape in the first or second degree or
21 a sexual offense in the first or second degree as prohibited on or before September 30,
22 1996, under former Article 27, § 12 of the Code; or

23 (3) a crime committed in another jurisdiction, federal or military
24 court, or foreign country that, if committed in this State, would constitute one of the
25 crimes listed in item (1) or (2) of this subsection.

26 (n) “Supervising authority” means an agency or person that is responsible for
27 collecting the information for the initial registration of a sex offender and is:

28 (1) the Secretary, if the registrant is in the custody of a correctional
29 facility operated by the Department;

1 (2) the administrator of a local correctional facility, if the registrant,
2 including a participant in a home detention program, is in the custody of the local
3 correctional facility;

4 (3) the court that granted the probation or suspended sentence, except
5 as provided in item (9) of this subsection, if the registrant is granted probation before
6 judgment, probation after judgment, or a suspended sentence;

7 (4) the Director of the Patuxent Institution, if the registrant is in the
8 custody of the Patuxent Institution;

9 (5) the Secretary of Health and Mental Hygiene, if the registrant is in
10 the custody of a facility operated by the Department of Health and Mental Hygiene;

11 (6) the court in which the registrant was convicted, if the registrant's
12 sentence does not include a term of imprisonment or if the sentence is modified to time
13 served;

14 (7) the Secretary, if the registrant is in the State under terms and
15 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title
16 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections
17 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

18 (8) the local law enforcement unit where the sex offender is a resident,
19 is a transient, or habitually lives on moving from another jurisdiction or foreign
20 country that requires registration if the sex offender is not under the supervision,
21 custody, or control of another supervising authority;

22 (9) the Director of Parole and Probation, if the registrant is under the
23 supervision of the Division of Parole and Probation; or

24 (10) the Secretary of Juvenile Services, if the registrant was a minor at
25 the time the act was committed for which registration is required.

26 11-723.

27 (c) (1) Except as provided in paragraph (2) of this subsection, the term of
28 lifetime sexual offender supervision imposed on a person for a crime committed on or
29 after October 1, 2010, shall:

30 (i) be a term of life; and

31 (ii) commence on the expiration of the later of any term of
32 imprisonment, probation, parole, [or] mandatory supervision, **OR COMMITMENT TO A**
33 **FACILITY OWNED AND OPERATED BY THE DEPARTMENT OF HEALTH AND**

1 **MENTAL HYGIENE IN ACCORDANCE WITH § 10-641 OF THE HEALTH – GENERAL**
2 **ARTICLE.**

3 **Article – Health – General**

4 1-101.

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

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

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

8 10-101.

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

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

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

15 **10-634. RESERVED.**

16 **10-635. RESERVED.**

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

18 **10-636.**

19 **(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS**
20 **INDICATED.**

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

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

26 **(D) “MENTAL ABNORMALITY” MEANS A CONGENITAL OR ACQUIRED**
27 **CONDITION THAT AFFECTS EMOTIONAL OR VOLITIONAL CAPACITY TO**
28 **PREDISPOSE A PERSON TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A**

1 DEGREE THAT MAKES THE PERSON A MENACE TO THE HEALTH AND SAFETY OF
2 OTHERS.

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

4 (1) A STRANGER; OR

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

7 (F) "SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT" MEANS
8 A SEXUALLY VIOLENT OFFENDER WHO IS PLACED IN THE CUSTODY OF THE
9 SECRETARY IN ACCORDANCE WITH § 10-643 OF THIS SUBTITLE.

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

12 10-637.

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 THE ANTICIPATED RELEASE FROM A CORRECTIONAL
16 FACILITY OF A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT
17 OFFENSE.

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

22 10-638.

23 A PERSON IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT
24 IF THE PERSON:

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

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

31 10-639.

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

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

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

9 **(2) A MULTIDISCIPLINARY TEAM, TO BE APPOINTED BY THE**
10 **COMMISSIONER FROM REPRESENTATIVES OF THE DEPARTMENT AND THE**
11 **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

12 **10-640.**

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

18 **10-641.**

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

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

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

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

30 **(C) THE PERSON NAMED IN THE PETITION SHALL BE ENTITLED TO BE**
31 **REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE**

1 WITNESSES, AND TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE
2 COURT FILE.

3 **10-642.**

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

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

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

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

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

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

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

26 **10-643.**

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

1 **10-644.**

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 PERSON IN CHARGE OF
5 THE STATE FACILITY SHALL COMPLETE A REPORT OF THE MENTAL
6 EXAMINATION AND SHALL FILE A COPY OF THE REPORT WITH THE COURT THAT
7 ORDERED THE COMMITTED PERSON TO A STATE FACILITY UNDER THIS PART.

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

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

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

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

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

22 **10-645.**

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

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

33 (3) THE ATTORNEY GENERAL:

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

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

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

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

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

16 **10-646.**

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

19 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
20 **October 1, 2013.**