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Number 19
Involuntary Civil Commitment of
Sexually Violent Predators

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Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

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Involuntary Civil Commitment of Sexually Violent Predators

Legislators in the 1990s have discovered that sexually violent criminals are completing their criminal sentences and being released from prison even though they remain a serious threat to society. While some sexually violent people can be civilly committed under traditional involuntary civil commitment laws, many cannot because the abnormal or antisocial behavior of sexual predators often does not fit the narrow definition of mental illness under these statutes. In response to the perceived danger, several states have passed laws providing for the involuntary civil commitment of sexually violent predators to high security mental-health institutions.

To enlarge the scope of persons to which laws apply, several legislatures have rewritten or redefined the type of mental disorder which a court can use to commit a person. An explanation of a sexual predator law is provided by the Kansas legislature:

[T]he prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons
[T]herefore a civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the legislature.

Kan. Stat. Ann. § 59-29a01 (1998).

In 1997 the U.S. Supreme Court upheld the Kansas sexually violent predator statute, holding that the law did not violate substantive due process, equal protection, or double jeopardy provisions of the Constitution. *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997). Following the *Hendricks* decision, several states have introduced similar legislation.

Involuntary Civil Commitment of Sexually Violent Predators (Current through December 31, 1998)

Arizona	Ariz. Rev. Stat. Ann. § 36-3701 et seq. (West Supp. 1998)
California	Cal. Welf. & Instit. Code § 6600 et seq. (West Supp. 1999)
Florida	Fla. Stat. Ann. § 916.31 et seq. (1998)
Illinois	725 Ill. Comp. Stat. Ann. § 207/1 et seq. (West Supp. 1998)
Iowa	Iowa Code §229A.1 et seq. (1998)
Kansas	Kan. Stat. Ann. § 59-29a02 et seq. (1998)

Minnesota	Minn. Stat. § 253B.02(18b) (1997) Minn. Stat. § 253B.185 (1997) Minn. Stat. § 253B.18 (1997)
Missouri	Mo. Rev. Stat. § 632.480 et seq. (1998)
New Jersey	N.J. Rev. Stat. § 30:4-27.24 et seq. (1998)
North Dakota	N.D. Cent. Code § 25-03.3-01 et seq. (Supp. 1997)
South Carolina	S.C. Code § 44-48-20 et seq. (1998)
Washington	Wash. Rev. Code § 71.09.020 et seq. (1997)
Wisconsin	Wis. Stat. Ann. § 980.01 et seq. (West Supp. 1998)

**Involuntary Civil Commitment of
Sexually Violent Predators**
(Current through December 31, 1998)

ARIZONA**Ariz. Rev. Stat. Ann. § 36-3701 (West Supp. 1998)**

Mental disorder means a paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder or conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others.

Sexually violent person means a person to whom both of the following apply: (1) has ever been convicted of or found guilty but insane of a sexually violent offense or who was charged with a sexually violent offense and who was determined incompetent to stand trial and (2) has a mental disorder that makes the person likely to engage in acts of sexual violence.

Ariz. Rev. Stat. Ann. § 36-3706 (West Supp. 1998)

The court or jury shall determine if the person named in the petition is a sexually violent person. The county attorney, attorney general or person named in the petition may request a jury trial. If no request is made, the trial shall be before the court.

Ariz. Rev. Stat. Ann. § 36-3704(C) (West Supp. 1998)

The person who is named in the petition is entitled to assistance of counsel at any proceeding conducted pursuant to this chapter. If the person is indigent, the court shall appoint counsel to assist the person.

Ariz. Rev. Stat. Ann. § 36-3703 (West Supp. 1998)

If the person named is subject to an examination, the person may select a competent professional or to perform the evaluation. If the person is indigent, the court shall assist the person in retaining a competent professional to conduct an examination or participate in the trial on the person's behalf. Each competent professional shall be given reasonable access to the person in order to conduct the examination and shall be given all relevant medical and psychological records test data, test results and reports.

Ariz. Rev. Stat. Ann. § 36-3707 (West Supp. 1998)

The court or jury shall determine beyond a reasonable doubt if the person named in the petition is a sexually violent person. If the state alleges that the sexually violent offense on which the petition for commitment is based was sexually motivated, the state shall prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

If the court or jury determines that the person is a sexually violent predator, the court shall either: (1) commit the person to the custody of the department of health services for placement in a licensed

facility under the supervision of the superintendent of Arizona State hospital and shall receive care, supervision, and treatment until the person's mental disorder has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged; or (2) order that the person be released to a less restrictive alternative.

If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent predator, the court shall order the person's release.

If the person named in the petition was found incompetent to stand trial, the court first shall hear evidence and determine if the person committed the act or acts charged if the court did not enter a finding before the charges were dismissed. The court shall enter specific findings on whether the person committed the act or acts charged, the extent to which the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If the court finds beyond a reasonable doubt that the person committed the act or acts charged, the court shall enter a final order to that effect and may then consider whether the person should be committed pursuant to this section.

Ariz. Rev. Stat. Ann. § 36-3708 (West Supp. 1998)

The psychiatrist psychologist or other competent professional of the state hospital or a licensed facility under the supervision of the superintendent of the Arizona state hospital shall annually examine each person who is committed pursuant to this chapter. The person who conducts the annual examination shall submit the examination report to the court. The annual report shall state if conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community.

The person may retain, or on the request of an indigent person the court may appoint, competent professional to conduct the examination. A retained or appointed competent professional shall have access to all records concerning the person.

Ariz. Rev. Stat. Ann. § 36-3709 (West Supp. 1998)

If the superintendent of the state hospital or the director of the department of health services determines that the person's mental disorder has so changed that the person is not likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative the superintendent or director shall allow the person to petition the court for conditional release to a less restrictive alternative. The person shall serve the petition on the court and the attorney for the state. The county attorney or the attorney general shall represent the state at the hearing and may request that the petitioner be examined by a competent professional selected by the county attorney or the attorney general. The attorney for the state has the burden of proving beyond a reasonable doubt that the petitioner's mental disorder has not changed and that the petitioner remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

This section does not prohibit the committed person from petitioning the court for conditional release to a less restrictive alternative without the approval of the superintendent of the state hospital or the director of the department of health services.

The committed person may be present at the hearing. The county attorney or the attorney general may request that the person be examined by a competent professional selected by the attorney for the state. The committed person may retain and the court on request of an indigent person may appoint a competent professional. The attorney for the state has the burden of proving beyond a reasonable doubt that the person's mental disorder has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative.

CALIFORNIA

Cal. Welf. & Instit. Code § 6600 (West Supp. 1999)

Sexually violent predator means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

Diagnosed mental disorder includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

Cal. Welf. & Instit. Code § 6600.1 (West Supp. 1999)

If the victim of an underlying offense is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a sexually violent offense.

Cal. Welf. & Instit. Code § 6601 (West 1999)

The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

Cal. Welf. & Instit. Code § 6602 (West Supp. 1999)

A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

Cal. Welf. & Instit. Code § 6603 (West Supp. 1999)

A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury. If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury. A unanimous verdict shall be required in any jury trial.

Cal. Welf. & Instit. Code § 6604 (West Supp. 1999)

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

Cal. Welf. & Instit. Code § 6605 (West Supp. 1999)

A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

If the court or jury rules against the committed person at the hearing, the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

Cal. Welf. & Instit. Code § 6607 (West Supp. 1999)

If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release to the county attorney, the attorney of record for the person, and the committing court.

When a report and recommendation for conditional release is filed by the Director of Mental Health, the court shall set a hearing.

Cal. Welf. & Instit. Code § 6608 (West Supp. 1999)

Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record.

If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

FLORIDA

Fla. Stat. Ann. § 916.32 (1998)

Mental abnormality means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

Sexually violent predator means any person who: has been convicted of a sexually violent offense; and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Fla. Stat. Ann. § 916.35 (1998)

When the state attorney files a petition seeking to have a person declared a sexually violent predator, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall direct that the person be taken into custody and held in an appropriate secure facility.

Fla. Stat. Ann. § 916.36 (1998)

The court shall conduct a trial to determine whether the person is a sexually violent predator.

At all adversarial proceedings under this act, the person subject to this act is entitled to the assistance of counsel, and, if the person is indigent, the court shall appoint the public defender or, if a conflict exists, other counsel to assist the person.

If the person is subjected to a mental health examination under this chapter, the person also may retain experts or mental health professionals to perform an examination. If the person wishes to be examined by a professional of the person's own choice, the examiner must be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether such an examination is necessary. If the court determines that an examination is necessary, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services.

The person or the state attorney has the right to demand that the trial be before a jury. A demand for a jury trial must be filed, in writing, at least 5 days before the trial. If no demand is made, the trial shall be to the court.

Fla. Stat. Ann. § 916.37 (1998)

The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the decision must be unanimous. If a majority of the jury finds that the person is a sexually violent predator, but the decision is not unanimous, the state attorney may re-file the petition.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, sexually violent predators who are committed for control, care, and treatment by the Department of Children and Family Services under this section shall be kept in a secure facility segregated from patients who are not committed under this section

Fla. Stat. Ann. § 916.38 (1998)

A person committed under this act shall have an examination of his or her mental condition once every year or more frequently at the court's discretion. The person may retain or, if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such a professional shall have access to all records concerning the person. The results of the examination shall be provided

to the court that committed the person. Upon receipt of the report, the court shall conduct a review of the person's status.

The department shall provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

The court shall hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel at the probable cause hearing, but the person is not entitled to be present. If the court determines that there is probable cause to believe it is safe to release the person, the court shall set a trial before the court on the issue.

At the trial before the court, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. The state attorney shall represent the state and has the right to have the person examined by professionals chosen by the state. At the hearing, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

ILLINOIS

725 Ill. Comp. Stat. Ann. § 207/5 (West Supp. 1998)

Mental disorder means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

Sexually violent person means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease or mental defect, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

725 Ill. Comp. Stat. Ann. § 207/15 (West Supp. 1998)

A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

- (1) The person satisfies any of the following criteria: (A) The person has been convicted of a sexually violent offense; (B) The person has been found delinquent for a sexually violent offense; or (C) The person has been found not guilty of a sexually violent offense by reason of insanity, mental disease, or mental defect.

- (2) The person is within 90 days of discharge or entry into mandatory supervised release from a Department of Corrections correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense; or
- (3) The person is within 90 days of discharge or release from a Department of Corrections juvenile correctional facility, if the person was placed in the facility for being adjudicated delinquent on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.
- (4) The person has a mental disorder.
- (5) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

A petition filed under this Section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation was an act that was sexually motivated, the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

725 Ill. Comp. Stat. Ann. § 207/20 (West Supp. 1998)

The proceedings under this Act shall be civil in nature. The provisions of the Civil Practice Law, and all existing and future amendments of that Law shall apply to all proceedings hereunder except as otherwise provided in this Act.

725 Ill. Comp. Stat. Ann. § 207/25 (West Supp. 1998)

At any hearing conducted under this Act, the person who is the subject of the petition has the right to:

- (1) To be present and to be represented by counsel. If the person is indigent, the court shall appoint counsel.
- (2) Remain silent.
- (3) Present and cross-examine witnesses.
- (4) Have the hearing recorded by a court reporter.

The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial be to a jury. A verdict of a jury under this Act is not valid unless it is unanimous.

Whenever the person who is the subject of the petition is required to submit to an examination under this Act, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person.

725 Ill. Comp. Stat. Ann. § 207/30 (West Supp. 1998)

Whenever a petition is filed under this Act, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

725 Ill. Comp. Stat. Ann. § 207/35 (West Supp. 1998)

At the trial to determine whether the person who is the subject of a petition is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under this Section be by a jury. A request for a jury trial shall be made within 10 days after the probable cause hearing. If no request is made, the trial shall be by the court. The person, the person's attorney or the Attorney General or State's Attorney, whichever is applicable, may withdraw his or her request for a jury trial.

At a trial on a petition under this Act, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

If the State alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated, the State is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

Evidence that the person who is the subject of a petition was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

If the court or jury determines that the person who is the subject of a petition is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

725 Ill. Comp. Stat. Ann. § 207/55 (West Supp. 1998)

If a person has been committed under this act and has not been discharged, the Department shall conduct an examination of his or her mental condition within 6 months after an initial commitment and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to conditional release or to discharge. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the court that committed the person.

The court that committed a person may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

IOWA**Iowa Code §229A.2 (1998)**

Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

Sexually violent predator means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

Predatory means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

Iowa Code §229A.5 (1998)

Upon filing of a petition under this chapter, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. At the probable cause hearing, the detained person shall have the

following rights: (1) to be provided with prior notice of date, time, and location of the probable cause hearing; (2) to respond to the preliminary finding of probable cause; (3) to appear in person at the hearing; (3) to be represented by counsel; (4) to present evidence on the respondent's own behalf; (5) to cross-examine witnesses who testify against the respondent; and (5) to view and copy all petitions and reports in the possession of the court.

At the hearing, the state may rely upon the petition, but may also supplement the petition with additional documentary evidence or live testimony.

At the conclusion of the hearing, the court shall enter an order which does both of the following: verifies the respondent's identity; and determines whether probable cause exists to believe that the respondent is a sexually violent predator.

If the court determines that probable cause does exist, the court shall direct that the respondent be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the respondent is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

Iowa Code §229A.6 (1998)

A respondent to a petition alleging the person to be a sexually violent predator shall be entitled to the assistance of counsel and, if the respondent is indigent, the court shall appoint counsel to assist the respondent at state expense.

If a respondent is subjected to an examination under this chapter, the respondent may retain experts or professional persons to perform an independent examination on the respondent's behalf. If the respondent wishes to be examined by a qualified expert or professional person of the respondent's own choice, the examiner of the respondent's choice shall be given reasonable access to the respondent for the purpose of the examination, as well as access to all relevant medical and psychological records and reports. If the respondent is indigent, the court, upon the respondent's request, shall determine whether the services are necessary and the reasonable compensation for the services. If the court determines that the services are necessary and the requested compensation for the services is reasonable, the court shall assist the respondent in obtaining an expert or professional person to perform an examination or participate in the trial on the respondent's behalf.

Iowa Code §229A.7 (1998)

If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the

person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

Within sixty days after the completion of the probable cause hearing, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. If no demand is made, the trial shall be before the court.

At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the determination that the respondent is a sexually violent predator is made by a jury, the determination shall be by unanimous verdict of such jury. If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. The determination may be appealed.

The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services.

If the court or jury is not satisfied beyond a reasonable doubt that the respondent is a sexually violent predator, the court shall direct the respondent's release. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial.

Iowa Code §229A.8 (1998)

Each person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and probable cause hearing on the status of the committed person.

Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge at the probable cause hearing. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

The committed person shall have a right to have an attorney represent the person at the probable cause hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines

that probable cause exists to believe that the person's mental abnormality has so changed that the person is safe to be at large and will not engage in predatory acts or sexually violent offenses if discharged, then the court shall set a final hearing on the issue.

At the final hearing, the committed person shall be entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if discharged is likely to engage in acts of sexual violence.

Iowa Code §229A.10 (1998)

If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts or sexually violent offenses.

KANSAS

Kan. Stat. Ann. § 59-29a02 (1998)

Sexually violent predator means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence, if not confined in a secure facility.

Predatory means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

Kan. Stat. Ann. § 59-29a03 (1998)

The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team. The team,

within 30 days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

Kan. Stat. Ann. § 59-29a04 (1998)

When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

Kan. Stat. Ann. § 59-29a06 (1998)

The court shall conduct a trial to determine whether the person is a sexually violent predator.

At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this act, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. If no demand is made, the trial shall be before the court.

Kan. Stat. Ann. § 59-29a07 (1998)

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released, and such person's commitment is sought, the court shall first hear evidence and determine whether the person did commit the act or acts charged.

If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

Kan. Stat. Ann. § 59-29a08 (1998)

Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

If after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise the court shall order that the person be placed in transitional release.

At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure treatment facility.

Kan. Stat. Ann. § 59-29a09 (1998)

The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for care and treatment.

Kan. Stat. Ann. § 59-29a10 (1998)

If the secretary of the department of social and rehabilitation services determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to commit predatory acts of sexual violence.

If after the hearing the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise the court shall order that the person be placed in transitional release.

Kan. Stat. Ann. § 59-29a11 (1998)

Nothing in this act shall prohibit a person from filing a petition for discharge pursuant to this act. However, if a person has previously filed a petition for transitional release, conditional release or final discharge without the secretary of the department of social and rehabilitation services approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the secretary's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

Kan. Stat. Ann. § 59-29a14 (1998)

The county or district attorney shall file a special allegation of sexual motivation within 10 days after arraignment in every criminal case other than sex offenses when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether

or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses.

The county or district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

MINNESOTA

Minn. Stat. § 253B.02(18b) (1997)

A sexually dangerous person means a person who: (1) has engaged in a course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct. For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

Minn. Stat. § 253B.185 (1997)

The provisions of this chapter [providing for involuntary civil commitment] pertaining to persons mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality. Before commitment proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition.

The existence in any person of a condition of a sexual psychopathic personality or the fact that a person is a sexually dangerous person shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge.

Minn. Stat. § 253B.18 (1997)

Upon the filing of a petition alleging that a proposed patient is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is mentally ill and dangerous within the meaning of this section. The proposed patient has the burden of going forward in the presentation of evidence. The standard of proof remains as required by this chapter. Upon commitment, admission procedures shall be carried out pursuant to section 253B.10.

A written treatment report shall be filed by the treatment facility with the committing court within 60 days after commitment. If the person is in the custody of the commissioner of corrections when the initial commitment is ordered, the written treatment report must be filed within 60 days after the person is admitted to a secure treatment facility. The court shall hold a hearing to make a final determination

as to whether the person should remain committed as mentally ill and dangerous to the public. The hearing shall be held within the earlier of 14 days of the court's receipt of the written treatment report, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties. If the court finds that the patient should be committed as mentally ill, but not as mentally ill and dangerous to the public, the court may commit the person as a mentally ill person and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4 to 15. Failure of the treatment facility to provide the required report at the end of the 60-day period shall not result in automatic discharge of the patient.

If the court finds at the final determination hearing that the patient continues to be mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time. After a final determination that a patient is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.

MISSOURI

Mo. Rev. Stat. § 632.480 (1998)

Mental abnormality, a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

Predatory, acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

Sexually violent predator, any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who: (1) has pled guilty or been found guilty, or been found not guilty by reason of mental disease or defect, of a sexually violent offense; or (2) has been committed as a criminal sexual psychopath pursuant.

Mo. Rev. Stat. § 632.489.1 (1998)

Upon filing a petition, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such probable cause determination is made, the judge shall direct that person be taken into custody and direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail.

Such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) verify the detainee's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

At the probable cause hearing, the detained person shall have the following rights in addition to the rights previously specified: (1) to be represented by counsel; (2) to present evidence on such person's

behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file, including the assessment of the multidisciplinary team.

If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or psychologist who was not a member of the multidisciplinary team that previously reviewed the person's records. In addition, such person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. Any examination shall be conducted in the facility in which the person is confined. Any examinations ordered shall be made at such time and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the person examined, the director shall determine the time and conditions under which the examination shall be conducted. The psychiatrist or psychologist conducting such an examination shall be authorized to interview family and associates of the person being examined, as well as victims and witnesses of the person's offense or offenses, for use in the examination unless the court for good cause orders otherwise. The psychiatrist or psychologist shall have access to all materials provided to and considered by the multidisciplinary team and to any police reports related to sexual offenses committed by the person being examined.

Mo. Rev. Stat. § 632.492 (1998)

Within sixty days after the completion of any examination, the circuit court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings, the person shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. If no demand for a jury is made, the trial shall be before the court.

Mo. Rev. Stat. § 632.495 (1998)

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health. At all times, persons committed for control, care and treatment by the department of mental health shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted.

Mo. Rev. Stat. § 632.498 (1998)

Each person committed pursuant to this sections shall have a current examination of the person's mental condition made once every year by the director of the department of mental health or designee. The yearly report shall be provided to the court that committed the person. The court shall conduct an annual review of the status of the committed person. Nothing in this section shall prohibit the person from otherwise petitioning the court for discharge. The director of the department of mental health shall provide the committed person with an annual written notice of the person's right to petition the court for release over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by a psychiatrist or psychologist not employed by the department of mental health or the department of corrections. In addition, the person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.

NEW JERSEY**N.J. Rev. Stat. § 30:4-27.26 (1998)**

Mental abnormality means a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence.

Sexually violent predator means a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

N.J. Rev. Stat. § 30:4-27.28 (1998)

The Attorney General may initiate a court proceeding for involuntary commitment under this act by submitting to the court a clinical certificate for a sexually violent predator. Upon receiving these documents, the court shall immediately review them in order to determine whether there is probable cause to believe that the person is a sexually violent predator.

If the court finds that there is probable cause to believe that the person is a sexually violent predator in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing temporary commitment to a secure facility designated for the custody, care and treatment of sexually

violent predators pending the final hearing. In no event shall the person be released from confinement prior to the final hearing.

N.J. Rev. Stat. § 30:4-27.29 (1998)

A person who is involuntarily committed under this act shall receive a court hearing with respect to the issue of continuing need for involuntary commitment as a sexually violent predator within 20 days from the date of the temporary commitment order.

The Attorney General is responsible for presenting the case for the person's involuntary commitment as a sexually violent predator to the court.

A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.

N.J. Rev. Stat. § 30:4-27.30 (1998)

A psychiatrist on the person's treatment team who has conducted a personal examination of the person as close to the court hearing date as possible, but in no event more than five calendar days prior to the court hearing, shall testify at the hearing to the clinical basis for the need for involuntary commitment as a sexually violent predator. Other members of the person's treatment team and any other witness with relevant information offered by the person or the Attorney General shall also be permitted to testify at the hearing.

The person's next-of-kin may attend and, if the court so determines, may testify at the court hearing.

N.J. Rev. Stat. § 30:4-27.31 (1998)

A person subject to involuntary commitment as a sexually violent predator has the following rights at a court hearing: (1) the right to be represented by counsel or, if indigent, by appointed counsel; (2) the right to be present at the court hearing unless the court determines that because of the person's conduct at the court hearing the proceeding cannot reasonably continue while the person is present; (3) the right to present evidence; (4) the right to cross-examine witnesses; and (4) the right to a hearing in camera.

N.J. Rev. Stat. § 30:4-27.32 (1998)

If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as a sexually violent predator, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators.

If the Department of Human Services recommends conditional discharge of the person and the court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community so as to render involuntary commitment as a sexually violent predator unnecessary for that person, the court may order that the person be conditionally discharged in accordance with such plan.

Conditions imposed pursuant to this subsection shall include those recommended by the person's treatment team and developed with the participation of the person and shall be approved by the Department of Human Services. Conditions imposed on the person shall be specific and shall be for the purpose of ensuring that the person participates in necessary treatment and that the person does not represent a risk to public safety. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

A designated staff member on the person's treatment team shall notify the court if the person fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a facility designated for the custody, care and treatment of sexually violent predators for an assessment. The court shall determine, in conjunction with the findings of the assessment, if the person needs to be returned to custody and, if so, the person shall be returned to the designated facility for the custody, care and treatment of sexually violent predators. The court shall hold a hearing within 20 days of the day the person was returned to custody to determine if the order of conditional discharge should be vacated.

N.J. Rev. Stat. § 30:4-27.35 (1998)

A person committed under this act shall be afforded an annual court review hearing of the need for involuntary commitment as a sexually violent predator. If the court determines at a review hearing that involuntary commitment as a sexually violent predator shall be continued, it shall execute a new order. The court shall conduct the first review hearing 12 months from the date of the first hearing, and subsequent review hearings annually thereafter. The court may schedule additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days.

N.J. Rev. Stat. § 30:4-27.36 (1998)

At any time during the involuntary commitment of a person under this act, if the person's treatment team determines that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, the treatment team shall recommend that the Department of Human Services authorize the person to petition the court for discharge from involuntary commitment status. The Department of Human Services shall notify the Attorney General immediately upon providing such authorization.

N.J. Rev. Stat. § 30:4-27.37 (1998)

A person discharged by the court shall have a discharge plan prepared by the treatment team at the facility designated for the custody, care and treatment of sexually violent predators, pursuant to this section. The treatment team shall give the person an opportunity to participate in the formulation of the discharge plan.

NORTH DAKOTA**N.D. Cent. Code § 25-03.3-01 (Supp. 1997)**

Sexually dangerous individual means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. The term does not include an individual with mental retardation.

N.D. Cent. Code § 25-03.3-03 (Supp. 1997)

If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.

N.D. Cent. Code § 25-03.3-08 (Supp. 1997)

Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard *ex parte*. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility to be held for evaluation and subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.

N.D. Cent. Code § 25-03.3-09 (Supp. 1997)

Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.

After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and be signed by counsel for the respondent.

If the court determines that the respondent is indigent, the court shall appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses.

The state's attorney of a county that has expended sums may seek civil recovery of those sums from property of the respondent. Commencement of the action must occur within six years after the date the sums were paid. After notice and hearing, the court may order an individual to reimburse the county for expenditures made on that individual's behalf pursuant to this chapter.

N.D. Cent. Code § 25-03.3-11 (Supp. 1997)

The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent chooses to waive the preliminary hearing. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. Every individual not necessary must be excluded, except that the court may admit any individual having a legitimate interest in the proceeding. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct.

N.D. Cent. Code § 25-03.3-12 (Supp. 1997)

The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

N.D. Cent. Code § 25-03.3-13 (Supp. 1997)

Within thirty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. Every person not necessary must be excluded, except that the court may admit any person having a legitimate interest in the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or

program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

N.D. Cent. Code § 25-03.3-17 (Supp. 1997)

A committed individual must remain in the care, custody, and control of the executive director until, in the opinion of the executive director, the individual is safe to be at large and has received the maximum benefit of treatment.

Each committed individual must have an examination of that individual's mental condition at least once a year. A report regarding the examination must be provided to the court that committed the individual. At the time of the annual examination, the committed individual has the right to have an expert examine the individual, and, upon the request of an indigent committed individual, the court shall appoint a qualified expert to examine the committed individual and report to the court. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

If a committed individual has been committed to an out-of-state facility by the executive director for purposes of treatment, an expert from that state may be appointed by the court as a qualified expert for an indigent committed individual for any postcommitment proceeding.

After any report pursuant to this section is provided to the court, the court may order further examination and investigation of the committed individual as the court considers necessary. The court may set the matter for a hearing. At the hearing, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state at the hearing. After the hearing, the court shall determine whether the committed individual is to be discharged or to be retained as a sexually dangerous individual in the care, custody, and control of the executive director.

The executive director may only discharge a sexually dangerous individual from commitment pursuant to a court order. The executive director may petition the committing court at any time for the discharge of the committed individual. The executive director shall give the state's attorney notice of any petition for discharge the executive director files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court on the petition. The state's attorney may waive this right.

N.D. Cent. Code § 25-03.3-18 (Supp. 1997)

Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the

committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court.

If the committed individual files a petition for discharge and has not had a hearing during the preceding twelve months, the committed individual has a right to a hearing on the petition.

At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. The court shall appoint a qualified expert, if the committed individual is indigent and requests an appointment. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.

SOUTH CAROLINA

S.C. Code § 44-48-30 et seq. (1998)

Sexually violent predator means a person who: has been convicted of a sexually violent offense; and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

“Mental abnormality” means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses.

S.C. Code § 44-48-70 (1998)

When the prosecutor's review committee has determined that probable cause exists to support the allegation that the person is a sexually violent predator, the Attorney General may file a petition with the court in the jurisdiction where the person committed the offense. The petition, which must be filed within thirty days of the probable cause determination by the prosecutor's review committee, shall request that the court make a probable cause determination as to whether the person is a sexually violent predator. The petition must allege that the person is a sexually violent predator and must state sufficient facts that would support a probable cause allegation.

S.C. Code § 44-48-80 (1998)

Upon filing of a petition, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines that probable cause exists to believe that the person is a sexually violent predator, the person must be taken into custody if he is not already confined in a secure facility.

Immediately upon being taken into custody, the person must be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexually violent predator. This hearing must be held within seventy-two hours after a person is taken into custody. At this hearing the court shall: (1) verify the detainee's identity; (2) receive evidence and hear argument from the person and the Attorney General; and (3) determine whether probable cause exists to believe that the person is a sexually violent predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

At the probable cause hearing as provided in subsection (B), the detained person has the following rights in addition to any rights previously specified: (1) to be represented by counsel; (2) to present evidence on the person's behalf; (3) to cross-examine witnesses who testify against the person; and (4) to view and copy all petitions and reports in the court file.

If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert approved by the court at the probable cause hearing.

S.C. Code § 44-48-90 (1998)

The court shall conduct a trial to determine whether the person is a sexually violent predator. The person or the Attorney General may request, in writing, that the trial be before a jury. If such a request is made, the court shall schedule a trial before a jury at the next available date in the court of common pleas in the county where the offense was committed. If no request is made, the trial must be before a judge in the county where the offense was committed. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. If a person is subjected to an examination under this chapter, the person may retain a qualified expert of his own choosing to perform the examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court shall determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court shall assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf.

S.C. Code § 44-48-100 (1998)

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other

patients under the supervision of the Department of Mental Health. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility including, but not limited to, a local or regional detention facility until another trial is conducted. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.

If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought, the court first shall hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply. After hearing evidence on this issue, the court shall make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

S.C. Code § 44-48-110 (1998)

A person committed pursuant to this chapter shall have an examination of his mental condition performed once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified expert to examine the person, and the expert shall have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the person. The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. The court shall conduct an annual hearing to review the status of the committed person. The committed person shall not be prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health shall provide the committed person with an annual written notice of the person's right to petition the court for release over the director's objection; the notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. The committed person has a right to have an attorney represent him at the hearing, but the committed person is not entitled to be present at the hearing. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court shall schedule a trial on the issue. At the trial, the committed person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The Attorney General shall represent the State and has the right to have the committed person evaluated by qualified experts chosen by the State. The trial must be before a jury if requested by either the person, the Attorney General, or the solicitor. The committed person also has the right to have qualified experts evaluate the person on the person's behalf, and the court shall appoint an expert if the person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed person's mental abnormality

or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

WASHINGTON

Wash. Rev. Code § 71.09.020 (1997)

Sexually violent predator means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

Wash. Rev. Code § 71.09.025 (1997)

When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to: (i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense; (ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile; (iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial; or (iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense.

Wash. Rev. Code § 71.09.030 (1997)

When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement; (2) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released; (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released; or (5) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

Wash. Rev. Code § 71.09.050 (1997)

The court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her.

Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court.

Wash. Rev. Code § 71.09.060 (1997)

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated, the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe either (a) to be at large, or (b) to be released to a less restrictive alternative. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released, and his or her commitment is sought, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

Wash. Rev. Code § 71.09.070 (1997)

Each person committed under this chapter shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether

conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community. The person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. The periodic report shall be provided to the court that committed the person under this chapter.

Wash. Rev. Code § 71.09.080 (1997)

Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

Wash. Rev. Code § 71.09.090 (1997)

If the secretary determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within 45 days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if conditionally released to a less restrictive alternative or unconditionally discharged is likely to engage in predatory acts of sexual violence.

Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval.

The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

WISCONSIN**Wis. Stat. Ann. § 980.01 (West Supp. 1998)**

Department means the department of health and family services.

Mental disorder means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

Sexually violent person means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

Wis. Stat. Ann. § 980.02 (West Supp. 1997)

A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

- (1) The person satisfies any of the following criteria: (a) The person has been convicted of a sexually violent offense. (b) The person has been found delinquent for a sexually violent offense. (c) The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.
- (2) The person is within 90 days of discharge or release, on parole or extended supervision, or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, or a secured child caring institution, if the person was placed in the facility for being adjudicated delinquent on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.
- (3) The person has a mental disorder.
- (4) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation was an act that was sexually motivated, the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

Wis. Stat. Ann. § 980.03 (West Supp. 1998)

The circuit court in which a petition is filed shall conduct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

At any hearing under this chapter, the person who is the subject of the petition has the right to: (a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations and, if applicable, the appointment of counsel. (b) Remain silent. (c) Present and cross-examine witnesses. (d) Have the hearing recorded by a court reporter.

The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial be to a jury of 12. If the person, the person's attorney, the department of justice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

Whenever the person who is the subject of the petition is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, and patient health care records. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

Wis. Stat. Ann. § 980.05 (West Supp. 1998)

At the trial to determine whether the person is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under this section be to a jury of 12.

At a trial on a petition under this chapter, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt. If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated, the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

Evidence that the person was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

If the court or jury determines that the person is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

Wis. Stat. Ann. § 980.06 (West Supp. 1998)

If a court or jury determines that the person is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person.

Wis. Stat. Ann. § 980.07 (West Supp. 1998)

If a person has been committed and has not been discharged, the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to supervised release or to discharge. At the time of a reexamination under this section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the person.

The court that committed a person may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

Wis. Stat. Ann. § 980.08 (West Supp. 1998)

Any person who is committed for institutional care in a secure mental health unit or facility or other facility may petition the committing court to modify its order by authorizing supervised release if at least six months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, and patient health care records. If any such examiner believes that the person is appropriate for supervised release, the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release.

The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid. The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the person is not confined in a secure mental health unit or facility. In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the

basis of the allegation, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.

Wis. Stat. Ann. § 980.09 (West Supp. 1998)

If the secretary determines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition, whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

If the court is satisfied that the state has not met its burden of proof, the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof, the court may proceed to determine whether to modify the petitioner's existing commitment order.

A person may petition the committing court for discharge from custody or supervision without the secretary's approval.

Wis. Stat. Ann. § 980.10 (West Supp. 1998)

A committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing and continue proceedings, if appropriate. If the person has not previously filed a petition for discharge without the secretary's approval, the court shall set a probable cause hearing and continue proceedings, if appropriate.