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SEXUALLY VIOLENT PREDATORS: ALLOW FOR INVOLUNTARY COMMITMENT

House Bill 5247
Sponsor: Rep. Kirk Profit
Committee: Mental Health

Complete to 5-11-98

A SUMMARY OF HOUSE BILL 5247 AS INTRODUCED 10-8-97

The bill would amend the Mental Health Code (MCL 330.1001 to 330.2106) by adding Chapter 10a to allow the involuntary confinement of an individual considered to be a sexually violent predator through a new civil commitment procedure. "Sexually violent predator" would be defined as an individual who had been convicted of or charged with a sexually violent offense and who suffered from a mental abnormality or personality disorder that made him or her likely to engage in predatory acts of sexual violence if not confined in a secure facility. A "sexually violent offense" would be a first, second, third, or fourth degree criminal sexual conduct (CSC) as defined in the Michigan Penal Code (MCL 750.520b et al.) committed either on, before, or after January 1, 1998. A "mental abnormality" would be a congenital or acquired condition that affected an individual's emotional or volitional capacity and that predisposed the individual to commit sexually violent offenses to a degree that rendered the individual a menace to the health and safety of others.

Under the bill, if an agency with jurisdiction over a person meeting certain conditions determined that the person could be a sexually violent predator, the agency would have to provide written notification of the date of the person's release to the attorney general (AG) and the multidisciplinary team established by the bill within three months prior to the person's release date. The notification would have to include the person's name, identifying factors, anticipated future residence, and offense history along with documentation of the person's institutional adjustment and any treatment received. The multidisciplinary team (created by the director of the Department of Corrections to review records of persons who may be sexually violent predators) would have to assess, within 30 days of being notified, whether or not the person met the bill's definition of a sexually violent predator and notify the AG of its assessment. In addition, the attorney general would have to appoint a prosecutor's review committee to review the records of persons referred to the AG's office. The committee would assist the AG in determining whether or not the person met the definition of a sexually violent predator. The bill would extend immunity from liability to the members and employees of the agency, multidisciplinary team, prosecutor's review committee, and any individuals who were contracted, appointed, or volunteered to perform services under the bill.

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If the prosecutor's review committee determined that the person was a sexually violent predator, within 75 days of receiving notification of a person's release date the AG could file a petition in court alleging that a person was a sexually violent predator if 1) the individual had been convicted of a sexually violent offense and his or her sentence was about to expire; 2) the individual had been charged with a sexually violent offense, had been determined to be incompetent to stand trial, and was about to be released; or 3) the individual had been found not guilty by reason of insanity of a sexually violent offense and was about to be released. A judge would then have to determine whether probable cause existed to support the allegation that the person was a sexually violent predator, and order the person to be taken into custody.

Hearing to determine probable cause. A person would have to be provided with notice of, and an opportunity to appear at, a hearing to contest the charge. At the hearing, the state could supplement the petition with additional documentation or live testimony. A court would have to verify the person's identity and determine whether probable cause existed to believe that the person was a sexually violent predator. The individual would have the right to be represented by counsel at the hearing, to present evidence on his or her behalf, to cross-examine witnesses who testified against him or her, and to view and copy all petitions and reports in the court file. If probable cause was determined, the court would have to order the person to be transferred to the Center for Forensic Psychiatry for an evaluation as to whether he or she is a sexually violent predator.

Trial. Within 60 days of the completion of the hearing to determine probable cause, the court would have to conduct a trial to determine whether the person was a sexually violent predator. The person, the AG, or the court could demand a jury trial. If no such demand was made, the trial would be before the court. The trial could be continued upon the request of either party and a showing of good cause, or by the court, and if the person would not be substantially prejudiced.

If the state alleged that the prior sexually violent offense that formed the basis for the petition for commitment was an act that was sexually motivated, the state would have to prove beyond a reasonable doubt that the alleged act had been sexually motivated. "Sexually motivated" would mean that one of the purposes for which the defendant committed the crime was the defendant's own sexual gratification. The court would have to order an individual's release if the court or jury was not satisfied beyond a reasonable doubt that the individual was a sexually violent predator. In case of a mistrial, the court would have to order that the individual be held at an appropriate secure facility that included a county jail until another trial was conducted.

Detention. Should the individual be determined as a sexually violent predator, he or she would have to be committed to the custody of the Department of Community Health in a department-operated secure facility for control, care, and treatment until such time as the individual's mental abnormality or personality disorder was so changed that it would be safe for him or her to be released. The facility could not be located on the grounds of a state mental facility or regional habilitation center unless the Department of Corrections certified that the facility was sufficiently secure to house sexually violent predators. In addition, the individual would have to be segregated at all times from any other patient under the supervision of DCH.

The involuntary detention or commitment of individuals would have to conform to constitutional requirements for care and treatment.

Access to counsel. The bill would specify that at all stages of the proceedings under the bill, a person would be entitled to the assistance of counsel. A court would have to appoint counsel if a person were indigent. If an individual were subject to an examination under the bill, he or she could retain an expert or professional person of his or her choice to also perform an examination. The chosen expert or professional would have to have reasonable access to the individual for the purpose of the examination, as well as to all relevant medical and psychological records and reports. The court would have to assist an indigent individual in obtaining an expert or professional person to perform an evaluation or participate in the trial on the individual's behalf.

Incompetency. The bill would provide for a hearing if a person was found incompetent to stand trial and was about to be released. The court would have to make a finding on such things as whether the individual committed the act charged, the extent to which an individual's incompetency or developmental disability affected the outcome of the hearing, and the strength of the prosecution's case. If the court then found beyond a reasonable doubt that the individual committed the act, the court would have to issue a final order (which could be appealed) and could then consider whether the individual should be committed under the bill.

Discharge. The bill would provide a mechanism by which an individual could be released if it were determined that the person's mental abnormality had changed so that he or she was not likely to commit sexually violent offenses.

Miscellaneous provisions.

- Individuals committed under the bill would have to be examined at least once each year, examinations would be provided for the indigent, and individuals could request discharge at that time. Annual reviews on individuals committed under the bill would also have to be conducted by the court, and the department would have to submit annual reports on the individuals to the court.

- The department would be responsible for all costs of evaluation and treatment of persons committed under the bill, and could obtain reimbursement under provisions contained in Chapter 8 of the code, entitled "Financial Liability for Mental Health Services."

- The department would have to release relevant information deemed necessary to protect the public regarding a specific sexually violent predator committed under the bill.

- Written notice of an impending release would have to be given to the person's victims. Failure to notify a victim would not create a cause of action.

- The bill would require the prosecuting attorney to file a special allegation of sexual motivation within 10 days after arraignment for crimes other than sexually violent offenses where sufficient evidence existed to justify a finding of sexual motivation.
- Documents such as psychological reports, medical records, and victim impact statements submitted to the court or admitted into evidence would be part of the record but would have to be sealed and opened only as ordered by the court or as provided in the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.