

SENATE BILL No. 465

May 9, 2001, Introduced by Senator VAN REGENMORTER and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1974 PA 258, entitled "Mental health code," (MCL 330.1001 to 330.2106) by adding chapter 10A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 10A

SEC. 1060. AS USED IN THIS CHAPTER:

(A) "AGENCY" MEANS THE DEPARTMENT OF CORRECTIONS.

(B) "COURT" MEANS THE COURT IN THIS STATE THAT CONVICTED AN INDIVIDUAL DESCRIBED IN SECTION 1063 OF THE VIOLENT OFFENSE.

(C) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CONDITION THAT AFFECTS AN INDIVIDUAL'S EMOTIONAL OR VOLITIONAL CAPACITY AND THAT PREDISPOSES THE INDIVIDUAL TO COMMIT VIOLENT OFFENSES TO A DEGREE THAT RENDERS THE INDIVIDUAL A MENACE TO THE HEALTH AND SAFETY OF OTHERS.

1 (D) "PREDATORY ACT" MEANS 1 OR MORE ACTS DIRECTED TOWARD AN
2 INDIVIDUAL FOR THE PRIMARY PURPOSE OF CRIMINAL VICTIMIZATION.

3 (E) "VIOLENT OFFENSE" MEANS 1 OR MORE OF THE FOLLOWING:

4 (i) A VIOLATION OF SECTION 83 OF THE MICHIGAN PENAL CODE,
5 1931 PA 328, MCL 750.83, CONCERNING ASSAULT.

6 (ii) A VIOLATION OF SECTION 91, 157B(2), 316, OR 317 OF THE
7 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.91, 750.157B, 750.316,
8 AND 750.317, CONCERNING MURDER.

9 (iii) A VIOLATION OF SECTION 436(2) OF THE MICHIGAN PENAL
10 CODE, 1931 PA 328, MCL 750.436, CONCERNING POISONING.

11 (iv) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE,
12 1931 PA 328, MCL 750.520B, CONCERNING CRIMINAL SEXUAL CONDUCT.

13 (v) A FELONY UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE
14 SUBSTANTIALLY CORRESPONDING TO AN OFFENSE LISTED IN SUBPARAGRAPHS
15 (i) TO (iv).

16 (F) "VIOLENT PREDATOR" MEANS AN INDIVIDUAL WHO MEETS ALL OF
17 THE FOLLOWING:

18 (i) HE OR SHE HAS BEEN CONVICTED OF 1 OF THE FOLLOWING:

19 (A) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE,
20 1931 PA 328, MCL 750.520B, AND, IN ADDITION, HAS BEEN CONVICTED
21 OF 2 OR MORE ACTS OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE
22 THAT ARE SEPARATE FROM AND DO NOT ARISE OUT OF THE INCIDENT OR
23 INCIDENTS THAT WERE THE BASIS FOR THE VIOLATION OF SECTION 520B
24 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, AS EVI-
25 DENCED BY CERTIFIED COPIES OF THE COURT RECORDS OF CONVICTIONS IN
26 THIS STATE, ANOTHER STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

1 (B) A VIOLENT OFFENSE OTHER THAN A VIOLATION OF SECTION 520B
2 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, AND, IN
3 ADDITION TO THE CONVICTION FOR THE VIOLENT OFFENSE, HAS COMMITTED
4 2 OR MORE MURDERS OR VOLUNTARY MANSLAUGHTERS THAT ARE SEPARATE
5 FROM AND DO NOT ARISE OUT OF THE INCIDENT OR INCIDENTS THAT WERE
6 THE BASIS FOR THE VIOLENT OFFENSE, AS EVIDENCED BY CERTIFIED
7 COPIES OF THE COURT RECORDS OF CONVICTIONS IN THIS STATE, ANOTHER
8 STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

9 (ii) HE OR SHE SUFFERS FROM A MENTAL ABNORMALITY THAT MAKES
10 THE INDIVIDUAL LIKELY TO ENGAGE IN FUTURE PREDATORY ACTS OF
11 VIOLENCE.

12 SEC. 1061. (1) THE LEGISLATURE FINDS THAT A SMALL BUT
13 EXTREMELY DANGEROUS GROUP OF VIOLENT PREDATORS EXISTS WHO DO NOT
14 HAVE A MENTAL ILLNESS THAT RENDERS THEM APPROPRIATE FOR THE
15 EXISTING CIVIL COMMITMENT PROCESS THAT IS DESIGNED TO PROVIDE
16 TREATMENT TO INDIVIDUALS WITH SERIOUS MENTAL ILLNESS. THE LEGIS-
17 LATURE ALSO FINDS THAT THE LIKELIHOOD OF A VIOLENT PREDATOR
18 ENGAGING IN REPEAT ACTS OF PREDATORY VIOLENCE IS HIGH. THE LEG-
19 ISLATURE ALSO FINDS THAT THE PROGNOSIS FOR CURING THIS SMALL
20 GROUP OF VIOLENT PREDATORS IS POOR, THAT THE TREATMENT NEEDS OF
21 THIS POPULATION ARE VERY LONG-TERM, AND THAT THE TREATMENT MODAL-
22 ITIES FOR THIS POPULATION ARE VERY DIFFERENT FROM THE TRADITIONAL
23 TREATMENT MODALITIES FOR INDIVIDUALS WHO ARE APPROPRIATE FOR COM-
24 MITMENT AND TREATMENT UNDER THIS CODE.

25 (2) OTHER THAN THE DEFINITION SECTIONS OF CHAPTER 1, THE
26 OTHER CHAPTERS OF THIS CODE DO NOT APPLY TO THIS CHAPTER AND THIS
27 CHAPTER DOES NOT APPLY TO THE OTHER CHAPTERS OF THIS CODE.

1 SEC. 1062. (1) IF THE AGENCY THAT HAS JURISDICTION OVER AN
2 INDIVIDUAL DESCRIBED IN SECTION 1063 DETERMINES THAT THE INDIVID-
3 UAL MAY BE A VIOLENT PREDATOR, THEN NOT LATER THAN 6 MONTHS
4 BEFORE THE ANTICIPATED DATE OF THE EXPIRATION OF THE INDIVIDUAL'S
5 MAXIMUM SENTENCE AND ANTICIPATED DATE OF RELEASE BY THE AGENCY,
6 THE AGENCY SHALL PROVIDE WRITTEN NOTIFICATION OF THE ANTICIPATED
7 DATE OF RELEASE TO THE ATTORNEY GENERAL AND TO EACH VICTIM WHO
8 HAS REQUESTED NOTIFICATION OF ANY CHANGE IN THE INDIVIDUAL'S
9 STATUS UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL
10 780.751 TO 780.834.

11 (2) IF AN AGENCY OR AN EMPLOYEE OF THAT AGENCY IN GOOD FAITH
12 MAKES A DETERMINATION OR GIVES NOTICE IN COMPLIANCE WITH SUBSEC-
13 TION (1), THE AGENCY OR THE EMPLOYEE IS NOT LIABLE IN A CIVIL
14 ACTION FOR DAMAGES BASED ON THE DETERMINATION OR NOTICE.

15 SEC. 1063. THE ATTORNEY GENERAL MAY FILE WITH THE COURT A
16 PETITION ALLEGING THAT AN INDIVIDUAL IS A VIOLENT PREDATOR AND
17 STATING SUFFICIENT FACTS TO SUPPORT THE ALLEGATION, IF THE INDI-
18 VIDUAL WAS CONVICTED OF A VIOLENT OFFENSE, AND HIS OR HER MAXIMUM
19 SENTENCE WILL EXPIRE OR HAS EXPIRED, ON OR AFTER JANUARY 1, 2002,
20 AND, FOR A VIOLENT OFFENSE DESCRIBED IN SECTION 1060(F)(i)(B), IN
21 ADDITION TO THE CONVICTION FOR THE VIOLENT OFFENSE THE INDIVIDUAL
22 HAS COMMITTED 2 OR MORE MURDERS OR VOLUNTARY MANSLAUGHTERS THAT
23 ARE SEPARATE FROM AND DO NOT ARISE OUT OF THE INCIDENT OR INCI-
24 DENTS THAT WERE THE BASIS FOR THE VIOLENT OFFENSE, AS EVIDENCED
25 BY CERTIFIED COPIES OF THE COURT RECORDS OF CONVICTIONS IN THIS
26 STATE, ANOTHER STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

1 SEC. 1064. UPON THE FILING OF A PETITION UNDER SECTION
2 1063, THE COURT SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
3 BELIEVE THAT THE INDIVIDUAL NAMED IN THE PETITION IS A VIOLENT
4 PREDATOR. IF THE DETERMINATION IS MADE THAT PROBABLE CAUSE
5 EXISTS, THE COURT SHALL ORDER THE CENTER FOR FORENSIC PSYCHIATRY
6 TO EVALUATE THE INDIVIDUAL TO DETERMINE WHETHER OR NOT THE INDI-
7 VIDUAL IS A VIOLENT PREDATOR. THE AGENCY SHALL ACCEPT THE INDI-
8 VIDUAL BACK AFTER THE COMPLETION OF THE EVALUATION. IN NO EVENT
9 SHALL THE INDIVIDUAL BE RELEASED FROM CONFINEMENT BEFORE TRIAL.
10 IF AN INDIVIDUAL'S MAXIMUM SENTENCE WOULD EXPIRE AND HE OR SHE
11 WOULD BE RELEASED BEFORE COMPLETION OF A TRIAL UNDER THIS CHAP-
12 TER, THE COURT SHALL ORDER THAT THE INDIVIDUAL BE CONFINED IN A
13 SECURE FACILITY.

14 SEC. 1065. (1) NOT MORE THAN 45 DAYS AFTER THE FILING OF A
15 PETITION UNDER SECTION 1063, THE COURT SHALL CONDUCT A TRIAL TO
16 DETERMINE WHETHER THE INDIVIDUAL IS A VIOLENT PREDATOR. THE
17 INDIVIDUAL, THE ATTORNEY GENERAL, OR THE COURT HAS THE RIGHT TO
18 DEMAND THAT THE TRIAL BE BEFORE A JURY. IF NO JURY DEMAND IS
19 MADE, THE TRIAL SHALL BE BEFORE THE COURT.

20 (2) AT ALL STAGES OF THE PROCEEDINGS UNDER THIS CHAPTER, AN
21 INDIVIDUAL SUBJECT TO THIS CHAPTER IS ENTITLED TO THE ASSISTANCE
22 OF COUNSEL. IF THE INDIVIDUAL IS INDIGENT, THE COURT SHALL
23 APPOINT COUNSEL TO ASSIST HIM OR HER.

24 (3) IF AN INDIVIDUAL IS SUBJECTED TO AN EXAMINATION UNDER
25 THIS CHAPTER, HE OR SHE MAY RETAIN AN EXPERT OR PROFESSIONAL
26 PERSON OF HIS OR HER CHOICE TO PERFORM AN EXAMINATION ON HIS OR
27 HER BEHALF. THE SELECTED EXPERT OR PROFESSIONAL PERSON MAY HAVE

1 REASONABLE ACCESS TO THE INDIVIDUAL FOR THE PURPOSE OF THE
2 EXAMINATION, AND TO ALL RELEVANT MEDICAL AND PSYCHOLOGICAL
3 RECORDS AND REPORTS. IF THE INDIVIDUAL IS INDIGENT AND SO
4 REQUESTS, THE COURT SHALL APPOINT A QUALIFIED EXPERT OR PROFES-
5 SIONAL PERSON TO PERFORM AN EXAMINATION OR PARTICIPATE IN THE
6 TRIAL ON THE INDIVIDUAL'S BEHALF.

7 SEC. 1066. (1) IN A TRIAL CONDUCTED UNDER SECTION 1065, THE
8 COURT OR JURY SHALL DETERMINE WHETHER, BEYOND A REASONABLE DOUBT,
9 THE INDIVIDUAL IS A VIOLENT PREDATOR.

10 (2) IF THE COURT OR JURY DETERMINES IN A TRIAL CONDUCTED
11 UNDER SECTION 1065 THAT THE INDIVIDUAL IS A VIOLENT PREDATOR, THE
12 INDIVIDUAL SHALL BE COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF
13 COMMUNITY HEALTH IN A SECURE FACILITY FOR CONTROL AND TREATMENT
14 UNTIL THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO CHANGED THAT THE
15 INDIVIDUAL IS SAFE TO BE DISCHARGED AND THE INDIVIDUAL'S PETITION
16 FOR DISCHARGE UNDER THIS CHAPTER IS GRANTED BY THE COURT. THE
17 CONTROL AND TREATMENT SHALL BE PROVIDED AT A FACILITY MANAGED BY,
18 OR UNDER CONTRACT TO, THE DEPARTMENT OF COMMUNITY HEALTH. THE
19 FACILITY SHALL NOT BE LOCATED ON THE GROUNDS OF A STATE PSYCHIAT-
20 RIC HOSPITAL OR REGIONAL CENTER FOR DEVELOPMENTAL DISABILITIES
21 UNLESS THE AGENCY AND THE DEPARTMENT OF COMMUNITY HEALTH CERTIFY
22 THAT THE FACILITY IS SUFFICIENTLY APPROPRIATE AND SECURE FOR THE
23 INDIVIDUAL.

24 (3) IF THE COURT OR JURY IN A TRIAL CONDUCTED UNDER SECTION
25 1065 IS NOT SATISFIED BEYOND A REASONABLE DOUBT THAT THE INDIVID-
26 UAL IS A VIOLENT PREDATOR, THE COURT SHALL ORDER THE INDIVIDUAL'S
27 RELEASE.

1 SEC. 1067. AN INDIVIDUAL COMMITTED UNDER THIS CHAPTER SHALL
2 BE EXAMINED AT LEAST ONCE EVERY 3 YEARS. THE INDIVIDUAL MAY
3 RETAIN OR, IF HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT
4 MAY APPOINT, A QUALIFIED EXPERT OR OTHER PROFESSIONAL PERSON TO
5 EXAMINE HIM OR HER. THE EXPERT OR PROFESSIONAL PERSON HAS ACCESS
6 TO ALL PERTINENT RECORDS CONCERNING THE INDIVIDUAL. THE DEPART-
7 MENT OF COMMUNITY HEALTH SHALL PROVIDE AN ANNUAL REPORT TO THE
8 COURT.

9 SEC. 1068. (1) IF THE DIRECTOR OF THE DEPARTMENT OF COMMU-
10 NITY HEALTH DETERMINES THAT THE INDIVIDUAL'S MENTAL ABNORMALITY
11 HAS CHANGED SO THAT THE INDIVIDUAL IS NOT LIKELY TO ENGAGE IN
12 FUTURE PREDATORY ACTS OF VIOLENCE IF RELEASED, THE DIRECTOR OF
13 THE DEPARTMENT OF COMMUNITY HEALTH SHALL AUTHORIZE THE INDIVIDUAL
14 TO PETITION THE COURT FOR DISCHARGE. THE PETITION SHALL BE
15 SERVED UPON THE COURT AND THE ATTORNEY GENERAL. THE ATTORNEY
16 GENERAL SHALL NOTIFY EACH VICTIM WHO WAS REQUIRED TO BE NOTIFIED
17 BY THE AGENCY UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87,
18 MCL 780.751 TO 780.834.

19 (2) UPON RECEIPT OF A PETITION FOR DISCHARGE, THE COURT
20 SHALL ORDER A HEARING TO BE HELD WITHIN 45 DAYS OF THE RECEIPT.
21 THE ATTORNEY GENERAL SHALL REPRESENT THE STATE, AND HAS THE RIGHT
22 TO HAVE THE PETITIONER EXAMINED BY AN EXPERT OR PROFESSIONAL
23 PERSON OF HIS OR HER CHOICE.

24 (3) A HEARING UNDER THIS SECTION SHALL BE BEFORE A JURY IF
25 DEMANDED BY EITHER THE PETITIONER OR THE ATTORNEY GENERAL. THE
26 ATTORNEY GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE
27 DOUBT THAT THE PETITIONER'S MENTAL ABNORMALITY REMAINS SO THAT

1 THE PETITIONER IS NOT SAFE TO BE DISCHARGED AND THAT IF
2 DISCHARGED IS LIKELY TO COMMIT 1 OR MORE FUTURE PREDATORY ACTS OF
3 VIOLENCE.

4 SEC. 1069. (1) NOTWITHSTANDING SECTION 1068, A COMMITTED
5 INDIVIDUAL MAY PETITION THE COURT FOR DISCHARGE NOT MORE THAN
6 ONCE EVERY 12 MONTHS WITHOUT THE APPROVAL OF THE DIRECTOR OF THE
7 DEPARTMENT OF COMMUNITY HEALTH. THE DIRECTOR OF THE DEPARTMENT
8 OF COMMUNITY HEALTH SHALL PROVIDE THE COMMITTED INDIVIDUAL WITH
9 AN ANNUAL WRITTEN NOTICE OF THE INDIVIDUAL'S RIGHT TO PETITION
10 THE COURT FOR DISCHARGE WITHOUT THE DEPARTMENT DIRECTOR'S
11 APPROVAL. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE
12 DIRECTOR OF THE DEPARTMENT OF COMMUNITY HEALTH SHALL FORWARD THE
13 NOTICE AND WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT
14 REQUIRED UNDER SECTION 1067.

15 (2) IF A COMMITTED INDIVIDUAL PETITIONS FOR DISCHARGE UNDER
16 THIS SECTION, THE COURT SHALL SET A SHOW CAUSE HEARING TO DETER-
17 MINE WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
18 INDIVIDUAL'S CONDITION HAS SO CHANGED THAT HE OR SHE IS SAFE TO
19 BE DISCHARGED. THE COMMITTED INDIVIDUAL HAS A RIGHT TO HAVE AN
20 ATTORNEY REPRESENT HIM OR HER AT THE SHOW CAUSE HEARING BUT IS
21 NOT ENTITLED TO BE PRESENT AT THE SHOW CAUSE HEARING. IF THE
22 COURT AT THE SHOW CAUSE HEARING DETERMINES THAT PROBABLE CAUSE
23 EXISTS TO BELIEVE THAT THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO
24 CHANGED THAT THE INDIVIDUAL IS SAFE TO BE DISCHARGED AND WILL NOT
25 ENGAGE IN FUTURE PREDATORY ACTS OF VIOLENCE IF DISCHARGED, THEN
26 THE COURT SHALL SET A HEARING ON THE ISSUE. SUBJECT TO
27 SECTION 1070, THE COMMITTED INDIVIDUAL IS ENTITLED TO BE PRESENT

1 AT THE HEARING AND TO HAVE THE BENEFIT OF ALL CONSTITUTIONAL
2 PROTECTIONS THAT WERE AFFORDED TO HIM OR HER AT THE INITIAL COM-
3 MITMENT PROCEEDING. THE ATTORNEY GENERAL SHALL REPRESENT THE
4 STATE AND HAS THE RIGHT TO A JURY TRIAL AND TO HAVE THE COMMITTED
5 INDIVIDUAL EVALUATED BY EXPERTS CHOSEN BY THE STATE. THE COMMIT-
6 TED INDIVIDUAL HAS THE RIGHT TO HAVE EXPERTS EVALUATE HIM OR HER
7 ON HIS OR HER BEHALF. THE COURT SHALL APPOINT AN EXPERT IF THE
8 INDIVIDUAL IS INDIGENT AND REQUESTS AN APPOINTMENT. THE ATTORNEY
9 GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT
10 THE COMMITTED INDIVIDUAL'S MENTAL ABNORMALITY HAS NOT CHANGED AND
11 THAT THE INDIVIDUAL IS NOT SAFE TO BE DISCHARGED AND IF DIS-
12 CHARGED WILL ENGAGE IN 1 OR MORE FUTURE PREDATORY ACTS OF
13 VIOLENCE.

14 SEC. 1070. NOTHING IN THIS CHAPTER PROHIBITS AN INDIVIDUAL
15 FROM FILING A PETITION FOR DISCHARGE UNDER THIS CHAPTER.
16 ACCORDING TO SECTION 1069, IF AN INDIVIDUAL HAS PREVIOUSLY FILED
17 A PETITION FOR DISCHARGE WITHOUT THE APPROVAL OF THE DIRECTOR OF
18 THE DEPARTMENT OF COMMUNITY HEALTH AND THE COURT DETERMINED,
19 EITHER UPON REVIEW OF THE PETITION OR FOLLOWING A HEARING, THAT
20 THE PETITIONER'S PETITION WAS FRIVOLOUS OR THAT THE PETITIONER'S
21 CONDITION HAD NOT SO CHANGED THAT HE OR SHE WAS SAFE TO BE DIS-
22 CHARGED, THEN THE COURT SHALL DENY THE SUBSEQUENT PETITION UNLESS
23 THE PETITION CONTAINS FACTS UPON WHICH A COURT COULD FIND THAT
24 THE CONDITION OF THE PETITIONER HAD SO CHANGED THAT A HEARING WAS
25 WARRANTED. UPON RECEIPT OF A FIRST OR SUBSEQUENT PETITION FROM A
26 COMMITTED INDIVIDUAL WITHOUT THE APPROVAL OF THE DIRECTOR OF THE
27 DEPARTMENT OF COMMUNITY HEALTH OR THE DIRECTOR OF THE FACILITY

1 MANAGED BY THE DEPARTMENT OF COMMUNITY HEALTH, THE COURT SHALL
2 REVIEW THE PETITION AND DETERMINE IF THE PETITION IS BASED UPON
3 FRIVOLOUS GROUNDS AND IF SO SHALL DENY THE PETITION WITHOUT A
4 HEARING.

5 SEC. 1071. IT IS THE INTENT OF THE LEGISLATURE TO SEPARATE
6 AND PRESERVE THE MONEY APPROPRIATED FOR THE TREATMENT OF INDIVID-
7 UALS UNDER THE OTHER CHAPTERS OF THIS CODE FROM THE MONEY APPRO-
8 PRIATED FOR THE ADMINISTRATION OF THIS CHAPTER.