

House Judiciary Committee Amendment # 1

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AMEND Senate Bill No. 2718

House Bill No. 2563*

by deleting all language after the enacting clause and by substituting instead the following:

Section 1. Tennessee Code Annotated, Title 33, Chapter 6, is amended by adding the following as a new part:

33-6-401. The legislature finds that a small but extremely dangerous group of sexually violent predators exist who have a mental abnormality or personality disorder and who have a significant likelihood to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. The existing involuntary commitment procedure pursuant to the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 6, is inadequate to address the risk these sexually violent predators pose to society. The legislature further finds that the prognosis for rehabilitating sexually violent predators is poor, the treatment needs of this small 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 defined in Tennessee Code Annotated, Title 33, Chapter 6. Therefore a civil commitment procedure for the long-term care and treatment of this small but extremely dangerous group of sexually violent predators is found to be necessary by the legislature.

33-6-402.

(a) "Sexually violent predator" means any person who has been convicted of a sexually violent offense or has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to

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Tennessee Code Annotated, Section 33-7-301, 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.

(b) "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.

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

(c) "Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(d) "Sexually motivated" means that one of the purposes for which the person committed the crime was for the purposes of the person's sexual gratification.

(e) "Sexually violent offense" means:

(1) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under §39-13-502;

(ii) Rape, under §39-13-503;

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(iii) Aggravated sexual battery, under §39-13-504;

(iv) Sexual exploitation of a minor, under §39-17-1003;

(v) Aggravated sexual exploitation of a minor, under §39-17-1004;

(vi) Especially aggravated sexual exploitation of a minor, under §39-17-1005;

(vii) Rape of a child, under §39-13-522;

(viii) Attempt, under §39-12-101, solicitation, under §39-12-102, or conspiracy, under §39-12-103, to commit any of the offenses enumerated within this subdivision (e)(1); or

(2) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under §39-2-603 [repealed];

(ii) Rape, under §39-2-604 [repealed];

(iii) Aggravated sexual battery, under §39-2-606 [repealed];

(iv) Assault with intent to commit rape or attempt to commit rape or sexual battery under §39-2-608 [repealed];

(v) Use of minor for obscene purposes, under §39-6-1137 [repealed];

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(vi) Promotion of performance including sexual conduct by minor, under §39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under §39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under §39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under §39-3705 [repealed]; or

(x) Solicitation, under §39-1-401 [repealed] or §39-118(b) [repealed], attempt, under §39-1-501 [repealed], §39-605 [repealed], or §39-606[repealed], or conspiracy, under §39-1-601 [repealed] or §39-1104 [repealed], to commit any of the offenses enumerated within subdivision (e)(2);

(3) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in subparagraphs (1) through (2) or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section; or

(f) "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and

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includes the department of correction, the department of mental health and mental retardation, and the Tennessee parole board.

(g) "Convicted of a sexually violent offense" means convicted of a sexually violent offense, whether by trial, guilty plea, or plea of nolo contendere, found not guilty of such offense by reason of mental illness or found incompetent to stand trial for such offense.

(h) "Person" means an individual who is a potential or actual subject of proceedings under this act.

(g) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of an individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

33-6-403.

(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in Tennessee Code Annotated, Section 33-6-402, the agency with jurisdiction over the release of the person shall give written notice of such to the attorney general and the clinical evaluation team established in subsection (d), twelve (12) months prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than ninety (90)

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days as a result of revocation of post-release supervision, written notice shall be given as soon as practicable following the person's re-admission to prison;

(2) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to Tennessee Code Annotated, Section 33-7-30;

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to Tennessee Code Annotated, Section 33-7-303.

(b) The agency with jurisdiction shall inform the attorney general and the clinical evaluation team established in subsection (d) of the following:

(1) The person's name, identifying factors, anticipated future release date, offense history; and

(2) documentation of institutional adjustment, treatment records and anticipated future residence.

(c) The agency with jurisdiction, its employees, officials, members of the clinical evaluation team established in subsection (d), the attorney general and employees, and individuals contracting, appointed or volunteering to perform service hereunder shall be immune from liability for any good-faith conduct under this section.

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(d) The commissioner of mental health and mental retardation shall establish a clinical evaluation team, the members of which shall be submitted to and approved by the Tennessee sexual offender treatment board. The clinical evaluation team shall consist of certified and qualified mental health professionals to review available records of each person referred to such team pursuant to subsection (a). The team, within ninety (90) days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator, as established in Tennessee Code Annotated, Section 33-6-402. Within a reasonable time following the assessment, the team shall forward a written assessment to the attorney general.

(e) Upon a finding by the clinical evaluation team that a person referred to such team pursuant to subsection (a) may be a sexually violent predator, and after receipt of such written assessment, the attorney general may bring an action against the person pursuant to Section 33-6-404.

33-6-404. When it appears that the person presently confined may be a sexually violent predator and the assessment of the clinical evaluation team finds so, the attorney general may file a petition in an appropriate court in the county where the person is confined, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

33-6-405.

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(a) Upon the filing of a petition under Section 33-6-404, the judge shall determine whether probable cause exists to believe the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that a hearing to determine whether or not such person is a sexually violent predator be held prior to the release of such person, or if such person has already been released, the judge shall direct that the person be taken into custody.

(b) Prior to release, or within seventy-two (72) hours after a person is taken into custody pursuant to paragraph (a), 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 person is a sexually violent predator. At this hearing the court shall:

(1) Verify the person'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 or both.

(c) At the probable cause hearing as provided in subsection (b), and at all other hearings pursuant to this act, the person shall have the following rights in addition to the rights previously specified:

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(1) To be represented by counsel or to have the court appoint counsel if the person is determined to be indigent;

(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.

(d) If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility for an evaluation as to whether the person is a sexually violent predator. The psychological sexual evaluation shall be conducted by a fully licensed mental health professional who is certified as a health service provider and is qualified to conduct the evaluation. The evaluation shall be conducted in accordance with the Tennessee sex offender treatment board evaluation protocol.

33-6-406.

(a) Within sixty (60) days after the completion of the evaluation held pursuant to Tennessee Code Annotated, Section 33-6-405, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this act, any person

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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.

(b) In addition to the previously specified rights, the person may retain experts or professional persons to perform an examination on 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. If a person 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 the services are necessary and the expert of professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining the professional 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.

(c) 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 thirty (30) days prior to trial. Number and selection of jurors shall be

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determined as provided by law and procedural rules. If no demand is made, the trial shall be before the court.

33-6-407.

(a) The court or jury shall determine beyond a reasonable doubt, whether 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 by the person. 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 mental health and mental retardation 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. Such control, care and treatment shall be provided at a facility operated by, or under contract with, the department of mental health and mental retardation. At all times, persons committed for control, care and treatment by department of mental health and mental retardation pursuant to this act 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 commissioner of the department of mental health and mental retardation and commencing January 1, 1999, such persons committed pursuant to this act shall be kept in a facility or building separate from any other patient under the supervision of department of mental health and mental retardation. The

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department of mental health and mental retardation is authorized to enter into an interagency agreement with the department of correction for the confinement and treatment of such persons. Such persons who are in the confinement of the commissioner of correction pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the commissioner of correction, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. 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 mistrial, the court shall direct the person 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 (90) days of the previous trial, unless such subsequent trial is continued as provided in Tennessee Code Annotated, Section 33-6-406.

(b) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to Tennessee Code Annotated, Section 33-7-102, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit 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

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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 such 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 section.

33-6-408. 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

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hearing. The department of mental health and mental retardation shall provide the committed person with an annual written notice of the person's right to petition the court for release over the commissioner's objection. The notice shall contain a waiver of rights. The department 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 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 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 at large and if released is likely to engage in acts of sexual violence.

33-6-409. The involuntary detention or commitment of persons under this act

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shall conform to constitutional requirements for care and treatment.

33-6-410. If the commissioner of the department of mental health and mental retardation 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 released, the commissioner 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 discharged is likely to commit predatory acts of sexual violence.

33-6-411. 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 discharge without the commissioner of the department of mental health and mental retardation 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

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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 person without the commissioner'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.

33-6-412. The department of mental health and mental retardation shall be responsible for all cost relating to the evaluation and treatment of persons committed to the department's custody under any provision of this act.

33-6-413. In addition to any other information required to be released under this act, prior to the release of a person committed under this act, the department of mental health and mental retardation shall give written notice of such release to any victim of the person's activities or crime who is alive and whose address is known to the department or, if the victim is deceased, to the victim's family, if the family's address is known to the department. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

33-6-414. In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in Section 33-6-403 and determining whether a person is or continues to be a sexually

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violent predator.

33-6-415. Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be part of the record but shall be sealed and opened only on order of the court or as provided in this part and amendments thereto.

33-6-416. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 2. This act shall take effect January 1, 1999, the public welfare requiring it.

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