

STATE/CODE	Commitment Eligibility	Standard of Future Dangerousness	Jury Trial	Authority to Request Jury	Burden of Proof	Treatment Following Commitment
<b>ARIZONA</b> 36-3701 et seq.	Convicted, found guilty but insane, or incompetent to stand trial for a sexually violent offense. Must be at least 18 years of age.	Mental disorder that makes the person <i>likely</i> to engage in acts of sexual violence	Yes	Either party	Beyond a reasonable doubt	Placed in custody of Dept of Health and human services.
<b>CALIFORNIA</b> W&I, 6600 et seq.	Convicted of a sexually violent offense against two or more victims for which person has received determinate prison sentence	Mental disorder that makes the person a danger to the health and safety of others in that the person <i>will engage</i> in sexually violent criminal behavior.	Yes, Unanimous	Either party	Beyond a reasonable doubt	Committed for an indeterminate term to the custody of the state Dept. of Health and Human Services for appropriate treatment and confinement in a secure facility designated by the director of mental health.
<b>CONNECTICUT</b> 2006 Ct. ALS 187; Conn. Gen. Stat. §17a-498	Determined by a risk assessment board and the standards of general civil commitment	Psychiatric disabilities and is dangerous to himself or others	No	N/A	Clear and convincing	Committed to a named hospital for psychiatric disabilities. Eligible for review yearly.
<b>FLORIDA</b> 394.910 et seq.	Convicted, adjudicated delinquent, or adjudicated not guilty by reason of insanity for a sexually violent offense	Mental abnormality or personality disorder that makes the person <i>likely</i> to engage in acts of sexual violence if not confined in a secure facility	Yes, Unanimous	Either party	Clear and convincing	Detained in a secure facility until disorder has changed so that it is safe for person to be at large.
<b>ILLINOIS</b> 725 ILCS 207/1 et seq.	Convicted, adjudicated delinquent, or found not guilty by reason of insanity for a sexually violent offense.	Dangerous because the person suffers from a disorder that makes it <i>substantially probable</i> that the person will engage in acts of sexual violence.	Yes	Either party	Beyond a reasonable doubt	Least restrictive manner appropriate. Judge has discretion to order institutional care or conditional release with necessary treatment and services.
<b>IOWA</b> 229.A1 et seq.	Convicted, found not guilty by reason of insanity, or found incompetent to stand trail for a sexually violent offense.	Mental abnormality that makes the person <i>likely</i> to engage in predatory acts constituting sexually violent offenses if not confined in a secure facility. <sup>iii</sup>	Yes, Unanimous	Either party or judge	Beyond a reasonable doubt.	Committed to custody of Dept. of Human Services for placement as inpatient. Right to petition for discharge or transitional release at annual review
<b>KANSAS</b> 59-29a01 et seq.	Convicted, found incompetent to stand trial, or found not guilty by reason of insanity for a sexually violent offense.	Mental abnormality or personal disorder which makes the person <i>likely</i> to engage in repeat acts of sexual violence	Yes, Unanimous	Either party or judge	Beyond a reasonable doubt	Committed to custody of Secretary of Social and Rehabilitation Services for placement in a secure facility. Right to petition for discharge at annual review.
<b>MASSACHUSETTS</b>	Convicted, adjudicated	Likely to attack or otherwise inflict	Yes, Unanimous	Automatically by jury unless	Beyond a reasonable	Committed to treatment center.

Part I, Title XVII, Chap. 123A, § 1 et seq.	delinquent, or found incompetent to stand trial for a sexual offense	injury on victims because of uncontrolled or uncontrollable desires.		person subject of petition affirmatively waives	doubt	May apply for community access program, but still requires residence at treatment center until discharge.
<b>MINNESOTA</b> 253B.01 et seq.	Engaged in a course of harmful sexual conduct that creates a substantial likelihood of serious physical or emotional harm to victims	Manifests a sexual, personality, or mental disorder; is <i>likely</i> to engage in acts of harmful sexual conduct.	No	No	Clear and convincing	Least restrictive treatment program that can meet person's and society's needs
<b>MISSOURI</b> 632.480 et seq.	Pled guilty, found guilty, or found not guilty by reason of mental disease of a sexually violent offense or has been committed as a sexual psychopath.	Mental abnormality which makes the person <i>more likely than not</i> to engage in predatory acts of sexual violence. <sup>iii</sup>	Yes, Unanimous	Either party or judge	Clear and convincing	Placed in the custody of the director 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.
<b>NEW HAMPSHIRE</b> RSA 135-E:1 et seq.	Found guilty, not guilty by reason of insanity, or incompetent to stand trial of a sexually violent offense	Person's propensity to commit sexual violence is of such a degree that the person has serious difficulty in controlling his or her behavior as to pose a potentially serious likelihood of danger to others.	Yes	Either party	Clear and Convincing	Committed to custody of Dept. of Corrections to be held in a secure psychiatric unit for control, care, and treatment until such time as the person's mental abnormality or personality disorder no longer poses a potentially serious likelihood of danger to others.
<b>NEW JERSEY</b> 30:4-27.24 et seq.	Convicted, adjudicated delinquent, found not guilty by reason of insanity, or found incompetent to stand trial for commission of a sexually violent offense. Must be 18 years old.	Likely to engage in acts of sexual violence.	No	N/a	Clear and Convincing	Involuntary commitment to a designated facility. Dept. of Human Services can recommend conditional discharge if likely to comply with treatment plan, but order is
<b>NORTH DAKOTA</b> 25.03-3.01 et seq.	Shown to have engaged in sexually predatory conduct.	Sexual, predatory, or mental disorder that makes the person <i>likely</i> to engage in further acts of sexually predatory conduct	No	N/A	Clear and convincing	Committed to custody of Executive Director from Dept. of Human Services. Director assigns least restrictive treatment facility or program necessary.

<b>PENNSYLVANIA</b> 42 Pa. C.S. §6401 et seq.	Inpatient involuntary treatment to a facility designated by the Dept. of Public Welfare. Convicted of, found incompetent to stand trial, found not guilty by reason of insanity, or guilty but mentally ill of a sexually violent offense. Includes children under 17 years of age.	Likely to engage in an act of sexual violence	No	N/A	Clear and convincing	Inpatient involuntary treatment to a facility designated by the Dept. of Public Welfare.
<b>SOUTH CAROLINA</b> 44-48-10 et seq.	Convicted of, found incompetent to stand trial, found not guilty by reason of insanity, or guilty but mentally ill of a sexually violent offense. Includes children under 17 years of age.	Mental abnormality or personality disorder that makes the person <i>likely</i> to engage in acts of sexual violence. <sup>1</sup>	Yes, Unanimous	Either party	Beyond a reasonable doubt	Committed to custody of Dept. of Mental Health as in-patient in a secure facility until such time as mental abnormality or personality disorder has so changed that the person is safe to be at large.
<b>TEXAS</b> Health & Safety, 841.001 et seq.	Repeat sexually violent offender serving determinate sentence.	Behavioral abnormality that makes the person <i>likely</i> to engage in a predatory act of sexual violence. <sup>iii</sup>	Yes, Unanimous	Yes, Unanimous	Beyond a reasonable doubt	Out-patient treatment and supervision.
<b>VIRGINIA</b> 37.1-70.1 et seq. Effective Jan. 1, 2004	Convicted of a sexually violent offense, or unrestorably incompetent to stand trial.	Mental or personality disorder that renders person <i>likely</i> to commit sexually violent acts.	Yes, Unanimous	Either party	Clear and Convincing	Placed in the custody of the department ment for care, control treatment until such time as the person's mental abnormality or personality disorder has so changed that the person will not present an undue risk to public safety.
<b>WASHINGTON</b> 71.09.010 et seq.	Convicted of, adjudicated delinquent, determined to be incompetent to stand trial, or found not guilty by reason of insanity of a crime of sexual violence.	Mental abnormality or personality disorder which makes the person <i>likely</i> to engage in predatory acts. <sup>ii, v</sup>	Yes, Unanimous	Either party or judge	Beyond a reasonable doubt	Committed to custody of Dept. of Social and Health Services for placement in a secure facility. Court can order less restrictive alternative placement only after a hearing following the initial commitment.
<b>WEST VIRGINIA</b> 62-11E1 et Seq.	Offenders with personality disorders or mental	Likely to engage in sexually violent behavior.	N/A	N/A	Public Private task Force	Public Private Task Force determination.

	abnormalities which make them largely unamenable to treatment.					
<b>WISCONSIN</b> 980.01 et seq.	Convicted, adjudicated delinquent, or found not responsible by reason of insanity for a crime of sexual violence.	Mental disorder that makes it <i>substantially probable</i> that the person will engage in acts of sexual violence.	Yes	Either party	Beyond a reasonable doubt	Committed to the department for care, control and treatment until such time as the person is no longer a sexually violent person.

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<sup>i</sup> “Likely” means more likely than not.

<sup>ii</sup> “Predatory acts” means directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

<sup>iii</sup> “Predatory act” is one committed for purposes of victimization, and directed toward a stranger, casual acquaintance, or person with whom relationship was established or promoted for purpose of victimization.

THIS CHART UPDATED MARCH 2007

**CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS  
STATUTE SUMMARY**

\*Relevant substantive excerpts from the statutes are presented in this summary. Please look up the statutes listed to obtain all relevant information, including procedural elements.

UPDATED MARCH 2007

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Arizona.....A.R.S § 36-3707

California.....Cal Wel & Inst Code § 6601

Connecticut.....2006 Ct. ALS 187, Conn. Gen. Stat. §17a-498

Florida.....Fla. Stat. §§394.913, 394.9135, 394.914

Illinois.....725 ILCS 207/40

Iowa.....Iowa Code § 229A.7

Kansas.....K.S.A. § 59-29a07

Massachusetts.....ALM GL ch. 123A, §§ 6A, 13, 15

Minnesota.....Minn. Stat. §§ 253B.02, .08

Missouri.....§ 632.489 R.S.Mo.

New Hampshire.....RSA 135-E:11

New Jersey.....N.J. Stat §§ 30:4-25.18, 30:4-27.24,30: 4-27.11a

North Dakota.....N.D. Cent. Code, § 25-03.3-13

Pennsylvania.....42 Pa.C.S. § 6403

South Carolina.....S.C. Code Ann. § 44-48-80

Texas.....Tex. Health & Safety Code §841.081

Virginia.....Va. Code Ann. § 37.2-905

Washington.....Rev. Code Wash. §§ 71.09.010, 71.09.060

West Virginia.....W.Va. Code § 62-11E-1

Wisconsin.....Wis. Stat. §§ 980.01, 980.

**ARIZONA, SEE §§ 36-3701 – 36-3717**

**\*Annotations current through January 5, 2007\***

**A.R.S. § 36-3707 (2006)**

**§ 36-3707.** Determining sexually violent person status; commitment procedures

A. 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.

B. If the court or jury determines that the person is a sexually violent person, 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 the Arizona state hospital and shall receive care, supervision or 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.

2. Order that the person be released to a less restrictive alternative if the conditions under [sections 36-3710](#) and [36-3711](#) are met.

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

D. 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.

**CALIFORNIA, SEE §§ 6600- 6609.3**

**Cal Wel & Inst Code § 6601 (2007)**

**§ 6601. Evaluation prior to release from prison; Petition for commitment**

**(a)**

(1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) 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.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing

psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

**(e)** If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

**(f)** If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

**(g)** Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

**(h)** If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

**(i)** If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole pursuant to Article 1 (commencing with [Section 3000](#)) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

**CONNECTICUT, SEE Conn. Gen. Stat. §17a-498**

**2006 Ct. ALS 187; 2006 Ct. P.A. 187; 2006 Ct. HB 5846**

[\*30] **Sec. 30.** (NEW) (Effective July 1, 2006) (a) There is established a Risk Assessment Board consisting of the Commissioner of Correction, the Commissioner of Mental Health and Addiction Services, the Commissioner of Public Safety, the Chief State's Attorney, the Chief Public Defender, the Chairperson of the Board of Pardons and Paroles, the Victim Advocate, the Executive Director of the Court Support Services Division of the Judicial Department and the chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and public safety, or their designees, a forensic psychiatrist with experience in the treatment of sexual offenders appointed by the Governor and a person trained in the identification, assessment and treatment of sexual offenders appointed by the Governor.

(b) The board shall develop a risk assessment scale that assigns weights to various risk factors including, but not limited to, the seriousness of the offense, the offender's prior offense history, the offender's characteristics, the availability of community supports, whether the offender has indicated or credible evidence in the record indicates that the offender will reoffend if released into the community and whether the offender demonstrates a physical condition that minimizes the risk of reoffending, and specifies the risk level to which offenders with various risk assessment scores shall be assigned.

(c) The board shall use the risk assessment scale to assess the risk of reoffending of each person subject to registration under chapter 969 of the general statutes, including incarcerated offenders who are within one year of their estimated release date, and assign each such person a risk level of high, medium or low.

(d) Not later than February 1, 2007, the board shall submit a report to the joint standing committee of the General Assembly on the judiciary in accordance with section 11-4a of the general statutes setting forth its findings and recommendations concerning:

(1) Whether information about sexual offenders assigned a risk level of high, medium or

low should be made available to the public through the Internet;

(2) the types of information about sexual offenders that should be made available to the public through the Internet which may include, but not be limited to, (A) the name, residential address, physical description and photograph of the registrant, (B) the offense or offenses of which the registrant was convicted or found not guilty by reason of mental disease or defect that required registration under chapter 969 of the general statutes, (C) a brief description of the facts and circumstances of such offense or offenses, (D) the criminal record of the registrant with respect to any prior convictions or findings of not guilty by reason of mental disease or defect for the commission of an offense requiring registration under chapter 969 of the general statutes, and (E) the name of the registrant's supervising correctional, probation or parole officer, and contact information for such officer;

(3) whether any of the persons assigned a high risk level by the board pursuant to subsection (c) of this section meets the criteria for civil commitment pursuant to section 17a-498 of the general statutes;

(4) whether additional restrictions should be placed on persons subject to registration under chapter 969 of the general statutes such as curfews and intensive monitoring on certain holidays; and

(5) whether persons convicted of a sexual offense who pose a high risk of reoffending should be required to register under chapter 969 of the general statutes regardless of when they were convicted or released into the community.

**Conn. Gen. Stat. § 17a-498 (2006)**

**§ 17a-498.** (Formerly Sec. 17-178). Hearing on commitment application. Notice. Rights of respondent. Examination by physicians. Order of commitment. Election of voluntary status prior to adjudication. Review of confinement.

(a) Upon such application being filed in the Probate Court, such court shall assign a time, not later than ten business days thereafter, and a place for hearing such application, and shall cause reasonable notice thereof to be given to the respondent and to such relative or relatives and friends as it deems advisable. Said notice shall inform such respondent that he or she has a right to be present at the hearing; that he or she has a right to counsel; that he or she, if indigent, has a right to have counsel appointed to represent him or her; and that he or she has a right to cross-examine witnesses testifying at any hearing upon such application.

(b) If the court finds such respondent is indigent or otherwise unable to pay for counsel, the court shall appoint counsel for such respondent, unless such respondent refuses counsel and the court finds that the respondent understands the nature of his or her refusal. The court shall provide such respondent a reasonable opportunity to select his or

her own counsel to be appointed by the court. If the respondent does not select counsel or if counsel selected by the respondent refuses to represent such respondent or is not available for such representation, the court shall appoint counsel for the respondent from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the Probate Court Administrator in accordance with [section 45a-77](#). The reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund. Prior to such hearing, such respondent or his or her counsel, in accordance with the provisions of [sections 52-146d](#) to [52-146i](#), inclusive, shall be afforded access to all records including, without limitation, hospital records if such respondent is hospitalized, and shall be entitled to take notes therefrom. If such respondent is hospitalized at the time of the hearing, the hospital shall make available at such hearing for use by the patient or his or her counsel all records in its possession relating to the condition of the respondent. Notwithstanding the provisions of [sections 52-146d](#) to [52-146i](#), inclusive, all such hospital records directly relating to the patient shall be admissible at the request of any party or the Court of Probate in any proceeding relating to confinement to or release from a hospital for psychiatric disabilities. Nothing herein shall prevent timely objection to the admissibility of evidence in accordance with the rules of civil procedure.

(c) The court shall require the certificates, signed under penalty of false statement, of at least two impartial physicians selected by the court, one of whom shall be a practicing psychiatrist, both of whom shall be licensed to practice medicine in the state of Connecticut and shall have been practitioners of medicine at least one year and shall not be connected with the hospital for psychiatric disabilities to which the application is being made, or related by blood or marriage to the applicant, or to the respondent. Such certificates shall indicate that they have personally examined such person within ten days of such hearing. The court shall appoint such physicians from a panel of physicians and psychiatrists provided by the Commissioner of Mental Health and Addiction Services and such appointments shall be made in accordance with regulations to be promulgated by the Probate Court Administrator in accordance with [section 45a-77](#). Each such physician shall make a report on a separate form provided for that purpose by the Department of Mental Health and Addiction Services and shall answer such questions as may be set forth on such form as fully and completely as reasonably possible. Such form shall include, but not be limited to questions relating to the specific psychiatric disabilities alleged, whether or not the respondent is dangerous to himself or herself or others, whether or not such illness has resulted or will result in serious disruption of the respondent's mental and behavioral functioning, whether or not hospital treatment is both necessary and available, whether or not less restrictive placement is recommended and available and whether or not respondent is incapable of understanding the need to accept the recommended treatment on a voluntary basis. Any such physician shall state upon the form the reasons for his or her opinions. Such respondent or his or her counsel shall have the right to present evidence and cross-examine witnesses who testify at any hearing on the application. If such respondent notifies the court not less than three days before the

hearing that he or she wishes to cross-examine the examining physicians, the court shall order such physicians to appear. The court shall cause a recording of the testimony of such hearing to be made, to be transcribed only in the event of an appeal from the decree rendered hereunder. A copy of such transcript shall be furnished without charge to any appellant whom the Court of Probate finds unable to pay for the same. The cost of such transcript shall be paid from funds appropriated to the Judicial Department. If, on such hearing, the court finds by clear and convincing evidence that the person complained of has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, it shall make an order for his or her commitment, considering whether or not a less restrictive placement is available, to a hospital for psychiatric disabilities to be named in such order, there to be confined for the period of the duration of such psychiatric disabilities or until he or she is discharged or converted to voluntary status pursuant to [section 17a-506](#) in due course of law. Such court order shall further command some suitable person to convey such person to such hospital for psychiatric disabilities and deliver him or her, with a copy of such order and of such certificates, to the keeper thereof. In appointing a person to execute such order, the court shall give preference to a near relative or friend of the person with psychiatric disabilities, so far as it deems it practicable and judicious. Notice of any action taken by the court shall be given to the respondent and his or her attorney, if any, in such manner as the court concludes would be appropriate under the circumstances.

(d) If the respondent refuses to be examined by the court-appointed physicians as herein provided, the court may issue a warrant for the apprehension of the respondent and a police officer for the town in which such court is located or if there is no such police officer then the state police shall deliver the respondent to a general hospital where the respondent shall be examined by two physicians one of whom shall be a psychiatrist, in accordance with subsection (c) of this section. If as a result of such examination, the respondent is committed under [section 17a-502](#), transportation of the respondent to any such hospital, if such respondent is a female, shall be in accordance with the provisions of [section 17a-505](#). If the respondent is not committed under [section 17a-502](#), he shall be released and the reports of such physicians shall be sent to the Court of Probate to satisfy the requirement of examination of two physicians under subsection (c) of this section.

(e) The respondent shall be given the opportunity to elect voluntary status under [section 17a-506](#) at any time prior to adjudication of the application, subject to the following provisions: (1) In the event that a patient is in the hospital, the patient shall be informed by a member of the hospital staff within twenty-four hours prior to the time an application is filed with the court, that he or she may continue in the hospital on a voluntary basis under the provisions of [section 17a-506](#), and any application for involuntary commitment by the hospital shall include a statement that such voluntary status has been offered to the respondent and refused, and (2) in the event that a respondent is not hospitalized the notice of hearing shall inform the respondent that he or she has the right to enter the hospital on a voluntary basis under the provisions of [section 17a-506](#), and if the respondent enters the hospital under said section, the application for involuntary commitment shall be withdrawn. When any patient who has elected voluntary status following the filing of an application but prior to adjudication in any

proceeding for involuntary commitment thereafter notifies the hospital that he or she wants to be released, a new application for involuntary commitment may be filed. If such application is filed within forty-five days after the patient's election of voluntary status on a prior application, the application for involuntary commitment may, at the discretion of the judge, be heard on the merits, notwithstanding the patient's subsequent request to remain a voluntary patient under the provisions of [section 17a-506](#). Notwithstanding the provisions of [sections 17a-29](#), [17a-540](#), [17a-543](#), [17a-544](#), subsection (f) of [section 17a-547](#) and [section 17a-548](#), in the event that a patient under [section 17a-506](#) refuses to accept medication or treatment in accordance with the treatment plan prescribed by the attending physician and such patient is imminently dangerous to himself or others, an application for involuntary commitment may be filed for such patient in accordance with the provisions of this section.

(f) The respondent shall be present at any hearing for his or her commitment under this section. If the respondent is medicated at that time, the court shall be notified by the hospital in writing of such fact and of the common effects of such medication.

(g) The hospital shall notify each patient at least annually that such patient has a right to a further hearing pursuant to this section. In the event that the patient requests such hearing it shall be held by the court of probate which ordered the confinement of such patient. Any such request shall be immediately filed with the appropriate court by the hospital. After such request is filed with the Probate Court, it shall proceed in the manner provided in subsections (a), (b), (c) and (f) of this section. In addition, the hospital shall furnish each court of probate on a monthly basis with a list of all patients confined therein involuntarily by such court who have been confined without release for one year since the last annual review under this section of the patient's commitment or since the original commitment. The hospital shall include in such notification the type of review which the patient last received. If the patient's last annual review had a hearing, the probate court notified shall, within fifteen business days thereafter, appoint an impartial physician who is a psychiatrist from the list provided by the Commissioner of Mental Health and Addiction Services as set forth in subsection (c) of this section and not connected with the hospital in which the patient is confined nor related by blood or marriage to the original applicant or to the respondent, which physician shall see and examine each such patient within fifteen business days after his appointment and make a report forthwith to such court of the condition of the patient on forms provided by the Department of Mental Health and Addiction Services. If the Court of Probate concludes that the confinement of any such patient should be reviewed by such court for possible release of the patient, the court, on its own motion, shall proceed in the manner provided in subsections (a), (b), (c) and (f) of this section, except that the examining physician shall be considered one of the physicians required by subsection (c) of this section. If the patient's last annual review did not result in a hearing, and in any event at least every two years, the probate court notified shall, within fifteen business days, proceed with a hearing in the manner provided in subsections (a), (b), (c) and (f) of this section. All costs and expenses, including Probate Court entry fees provided by statute, in conjunction with the annual psychiatric review and the judicial review under this subsection, except costs for physicians appointed pursuant to this subsection, shall be established by, and paid from

funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such costs and expenses, such payment shall be made from the Probate Court Administration Fund. Compensation of any physician appointed to conduct the annual psychiatric review, to examine a patient for any hearing held as a result of such annual review or for any other biennial hearing required pursuant to [sections 17a-75 to 17a-83](#), inclusive, [17a-450 to 17a-484](#), inclusive, [17a-495 to 17a-528](#), inclusive, [17a-540 to 17a-550](#), inclusive, [17a-560 to 17a-576](#), inclusive, and [17a-615 to 17a-618](#), inclusive, shall be paid by the state from funds appropriated to the Department of Mental Health and Addiction Services in accordance with rates established by the Department of Mental Health and Addiction Services.

**FLORIDA, SEE §§ 394.910 – 394.932**

**Fla. Stat. § 394.913 (2006)**

§ 394.913. Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams

(1) The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team, and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense. If the person has never been convicted of a sexually violent offense in this state but has been convicted of a sexually violent offense in another state or in federal court, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person was last convicted of any offense in this state. If the person is being confined in this state pursuant to interstate compact and has a prior or current conviction for a sexually violent offense, the agency with jurisdiction shall give written notice to the multidisciplinary team and a copy to the state attorney of the circuit where the person plans to reside upon release or, if no residence in this state is planned, the state attorney in the circuit where the facility from which the person to be released is located. Except as provided in [s. 394.9135](#), the written notice must be given:

(a) At least 545 days prior to the anticipated release from total confinement of a person serving a sentence in the custody of the Department of Corrections, except that in the case of persons who are totally confined for a period of less than 545 days, written notice must be given as soon as practicable;

(b) At least 180 days prior to the anticipated release from residential commitment of a person committed to the custody of the Department of Juvenile Justice, except that in the case of persons who are committed to low or moderate risk, written notice must be given as soon as practicable; or

(c) At least 180 days prior to the anticipated hearing regarding possible release of a person committed to the custody of the department who has been found not guilty by

reason of insanity or mental incapacity of a sexually violent offense.

(2) The agency with jurisdiction shall provide the multidisciplinary team with the following information:

(a) The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history;

(b) The person's criminal history, including police reports, victim statements, presentence investigation reports, postsentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents;

(c) Mental health, mental status, and medical records, including all clinical records and notes concerning the person;

(d) Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the Department of Juvenile Justice, copies of the most recent performance plan and performance summary; and

(e) If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.

(3) (a) The secretary or his or her designee shall establish a multidisciplinary team or teams.

(b) Each team shall include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The multidisciplinary team shall assess and evaluate each person referred to the team. The assessment and evaluation shall include a review of the person's institutional history and treatment record, if any, the person's criminal background, and any other factor that is relevant to the determination of whether such person is a sexually violent predator.

(c) Before recommending that a person meets the definition of a sexually violent predator, the person must be offered a personal interview. If the person agrees to participate in a personal interview, at least one member of the team who is a licensed psychiatrist or psychologist must conduct a personal interview of the person. If the person refuses to fully participate in a personal interview, the multidisciplinary team may proceed with its recommendation without a personal interview of the person.

(d) The Attorney General's Office shall serve as legal counsel to the multidisciplinary team.

(e) Within 180 days after receiving notice, there shall be a written assessment as to whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to the state attorney. The written

recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.

(4) The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the state attorney from proceeding against a person otherwise subject to the provisions of this part.

**Fla. Stat. § 394.9135 (2006)**

**§ 394.9135.** Immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release

(1) If the anticipated release from total confinement of a person who has been convicted of a sexually violent offense becomes immediate for any reason, the agency with jurisdiction shall upon immediate release from total confinement transfer that person to the custody of the Department of Children and Family Services to be held in an appropriate secure facility.

(2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the state attorney, as designated by [s. 394.913](#), with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within the next working day thereafter.

(3) Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, as designated in [s. 394.913](#), may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. If a petition is not filed within 48 hours after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.

(4) The provisions of this section are not jurisdictional, and failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the state attorney from proceeding against a person otherwise subject to the provisions of this part.

**Fla. Stat. § 394.914 (2006)**

**§ 394.914.** Petition; contents

Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, in accordance with [s. 394.913](#), may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. No fee shall be charged for the filing of a petition under this section.

**Fla. Stat. § 394.915 (2006)**

**§ 394.915.** Determination of probable cause; hearing; evaluation; respondent taken into custody; bail

(1) 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 order that the person remain in custody and be immediately transferred to an appropriate secure facility if the person's incarcerative sentence expires.

(2) Upon the expiration of the incarcerative sentence and before the release from custody of a person whom the multidisciplinary team recommends for civil commitment, but after the state attorney files a petition under [s. 394.914](#), the court may conduct an adversarial probable cause hearing if it determines such hearing is necessary. The court shall only consider whether to have an adversarial probable cause hearing in cases where the failure to begin a trial is not the result of any delay caused by the respondent. The person shall be provided with notice of, and an opportunity to appear in person at, an adversarial hearing. At this hearing, the judge shall:

(a) Receive evidence and hear argument from the person and the state attorney; and

(b) Determine whether probable cause exists to believe that the person is a sexually violent predator.

(3) At the adversarial probable cause hearing, the person has the right to:

(a) Be represented by counsel;

(b) Present evidence;

(c) Cross-examine any witnesses who testify against the person; and

(d) View and copy all petitions and reports in the court file.

(4) If the court again concludes that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person be held in an appropriate secure facility upon the expiration of his or her incarcerative sentence.

(5) After a court finds probable cause to believe that the person is a sexually violent predator, the person must be held in custody in a secure facility without opportunity for pretrial release or release during the trial proceedings.

**ILLINOIS, SEE §§ 725 ILCS 207/1 – 207/99**

**725 ILCS 207/40 (2007)**

**§ 725 ILCS 207/40. Commitment**

**Sec. 40. Commitment.** (a) If a court or jury determines that the person who is the subject of a petition under Section 15 of this Act [[725 ILCS 207/15](#)] 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.

(b)(1) The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 [[725 ILCS 207/15](#)] is a sexually violent person. If the court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order. A supplementary mental examination under this Section shall be conducted in accordance with Section 3-804 of the Mental Health and Developmental Disabilities Code [[405 ILCS 5/3-804](#)].

(2) An order for commitment under this Section shall specify either institutional care in a secure facility, as provided under Section 50 of this Act [[725 ILCS 207/50](#)], or conditional release. In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 [[725 ILCS 207/15](#)], 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. All treatment, whether in institutional care, in a secure facility, or while on conditional release, shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act [[20 ILCS 4026/1](#) et seq.] and conducted by a treatment provider approved by the Board. The Department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

(3) If the court finds that the person is appropriate for conditional release, the court shall

notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan. The conditional release program operated under this Section is not subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act [[740 ILCS 110/1](#) et seq.].

(4) An order for conditional release places the person in the custody and control of the Department. A person on conditional release is subject to the conditions set by the court and to the rules of the Department. Before a person is placed on conditional release by the court under this Section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this Section does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody under the rules of the Department.

At any time during which the person is on conditional release, if the Department determines that the person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, the Department may request the Attorney General or State's Attorney to request the court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and transport the person to the county jail. The Department may request, or the Attorney General or State's Attorney may request independently of the Department, that a petition to revoke conditional release be filed. When a petition is filed, the court may order the Department to issue a notice to the person to be present at the Department or other agency designated by the court, order a summons to the person to be present, or order a body attachment for all law enforcement officers to take the person into custody and transport him or her to the county jail, hospital, or treatment facility. The Department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the Department may detain the person in a jail, in a hospital or treatment facility. The State has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that the conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that conditional release be revoked, it may revoke the order for

conditional release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under Section 65 [[725 ILCS 207/65](#)] of this Act or until again placed on conditional release under Section 60 of this Act [[725 ILCS 207/60](#)].

(5) An order for conditional release places the person in the custody, care, and control of the Department. The court shall order the person be subject to the following rules of conditional release, in addition to any other conditions ordered, and the person shall be given a certificate setting forth the conditions of conditional release. These conditions shall be that the person:

(A) not violate any criminal statute of any jurisdiction;

(B) report to or appear in person before such person or agency as directed by the court and the Department;

(C) refrain from possession of a firearm or other dangerous weapon;

(D) not leave the State without the consent of the court or, in circumstances in which the reason for the absence is of such an emergency nature, that prior consent by the court is not possible without the prior notification and approval of the Department;

(E) at the direction of the Department, notify third parties of the risks that may be occasioned by his or her criminal record or sexual offending history or characteristics, and permit the supervising officer or agent to make the notification requirement;

(F) attend and fully participate in assessment, treatment, and behavior monitoring including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate to the person based upon the recommendation and findings made in the Department evaluation or based upon any subsequent recommendations by the Department;

(G) waive confidentiality allowing the court and Department access to assessment or treatment results or both;

(H) work regularly at a Department approved occupation or pursue a course of study or vocational training and notify the Department within 72 hours of any change in employment, study, or training;

(I) not be employed or participate in any volunteer activity that involves contact with children, except under circumstances approved in advance and in writing by the Department officer;

(J) submit to the search of his or her person, residence, vehicle, or any personal or real property under his or her control at any time by the Department;

(K) financially support his or her dependents and provide the Department access to any requested financial information;

(L) serve a term of home confinement, the conditions of which shall be that the person:

(i) remain within the interior premises of the place designated for his or her confinement during the hours designated by the Department;

(ii) admit any person or agent designated by the Department into the offender's place of confinement at any time for purposes of verifying the person's compliance with the condition of his or her confinement;

(iii) if deemed necessary by the Department, be placed on an electronic monitoring device;

(M) comply with the terms and conditions of an order of protection issued by the court pursuant to the Illinois Domestic Violence Act of 1986 [[750 ILCS 60/101](#) et seq.]. A copy of the order of protection shall be transmitted to the Department by the clerk of the court;

(N) refrain from entering into a designated geographic area except upon terms the Department finds appropriate. The terms may include consideration of the purpose of the entry, the time of day, others accompanying the person, and advance approval by the Department;

(O) refrain from having any contact, including written or oral communications, directly or indirectly, with certain specified persons including, but not limited to, the victim or the victim's family, and report any incidental contact with the victim or the victim's family to the Department within 72 hours; refrain from entering onto the premises of, traveling past, or loitering near the victim's residence, place of employment, or other places frequented by the victim;

(P) refrain from having any contact, including written or oral communications, directly or indirectly, with particular types of persons, including but not limited to members of street gangs, drug users, drug dealers, or prostitutes;

(Q) refrain from all contact, direct or indirect, personally, by telephone, letter, or through another person, with minor children without prior identification and approval of the Department;

(R) refrain from having in his or her body the presence of alcohol or any illicit drug prohibited by the Cannabis Control Act [[720 ILCS 550/1](#) et seq.], the Illinois Controlled Substances Act [[720 ILCS 570/100](#) et seq.], or the Methamphetamine Control and Community Protection Act [[720 ILCS 646/1](#) et seq.], unless prescribed by a physician, and submit samples of his or her breath, saliva, blood, or urine for tests to determine the presence of alcohol or any illicit drug;

(S) not establish a dating, intimate, or sexual relationship with a person without prior written notification to the Department;

(T) neither possess or have under his or her control any material that is pornographic, sexually oriented, or sexually stimulating, or that depicts or alludes to sexual activity or depicts minors under the age of 18, including but not limited to visual, auditory, telephonic, electronic media, or any matter obtained through access to any computer or material linked to computer access use;

(U) not patronize any business providing sexually stimulating or sexually oriented entertainment nor utilize "900" or adult telephone numbers or any other sex-related telephone numbers;

(V) not reside near, visit, or be in or about parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate without advance approval of the Department and report any incidental contact with minor children to the Department within 72 hours;

(W) not establish any living arrangement or residence without prior approval of the Department;

(X) not publish any materials or print any advertisements without providing a copy of the proposed publications to the Department officer and obtaining permission prior to publication;

(Y) not leave the county except with prior permission of the Department and provide the Department officer or agent with written travel routes to and from work and any other designated destinations;

(Z) not possess or have under his or her control certain specified items of contraband related to the incidence of sexually offending items including video or still camera items or children's toys;

(AA) provide a written daily log of activities as directed by the Department;

(BB) comply with all other special conditions that the Department may impose that restrict the person from high-risk situations and limit access or potential victims.

(6) A person placed on conditional release and who during the term undergoes mandatory drug or alcohol testing or is assigned to be placed on an approved electronic monitoring device may be ordered to pay all costs incidental to the mandatory drug or alcohol testing and all costs incidental to the approved electronic monitoring in accordance with the person's ability to pay those costs. The Department may establish reasonable fees for the cost of maintenance, testing, and incidental expenses related to the

mandatory drug or alcohol testing and all costs incidental to approved electronic monitoring.

**IOWA, SEE §§ 229A.1 – 229A.16**

**Iowa Code § 229A.7 (2005)**

**229A.7** Trial, determination, commitment procedure, chapter 28E agreements, mistrials.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to chapter 812, or 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 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.

2. If a person has been found not guilty by reason of insanity, the court shall determine whether the acts charged were proven as a matter of law. If as a matter of law the finding of not guilty by reason of insanity requires a finding that the underlying elements of the charged offense were proven, then no further fact-finding is required. If as a matter of law the finding of not guilty by reason of insanity does not require a finding that the underlying elements of the charged offense be proven, the case shall proceed in the same manner as if the person were found to be incompetent to stand trial as provided in subsection 1.

3. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. 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. In determining what constitutes good cause, the court shall consider the

length of the pretrial detention of the respondent.

4. 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 ten days prior to trial. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

5. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the case is before a jury, the verdict shall be unanimous that the respondent is a sexually violent predator.

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 placed in a transitional release program or discharged. The determination may be appealed.

6. If the court or jury determines that the respondent is a sexually violent predator, the court shall order the respondent to submit a DNA sample for DNA profiling pursuant to section 81.4.

7. 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 prior to placement in a transitional release program or release with or without supervision, 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. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

8. If the court makes the determination or the jury determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an

appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 3.

**KANSAS, SEE §§ 59-29a01 – 59-29a21**

**K.S.A. § 59-29a07 (2006)**

**59-29a07.** Same; determination; commitment procedure; interagency agreements; mistrials; persons committed and later taken into custody after parole, arrest or conviction, procedure; persons found incompetent to stand trial, procedure.

(a) 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. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services.

(b) At all times, persons committed for control, care and treatment by the department of social and rehabilitation services pursuant to [K.S.A. 59-29a01](#) et seq., and amendments thereto, 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 secretary of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to [K.S.A. 59-29a01](#) et seq., and amendments thereto, shall be kept in a facility or building separate from any other patient under the supervision of the secretary.

(c) The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to [K.S.A. 59-29a01](#) et seq., and amendments thereto, shall be taken into custody by any law enforcement officer as defined in [K.S.A. 21-3110](#) and amendments thereto pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to [K.S.A. 59-29a01](#) et seq., and amendments thereto. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be

excused from the provisions of [K.S.A. 59-29a08](#) and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment pursuant to [K.S.A. 59-29a01](#) et seq., and amendments thereto, and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) 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.

(f) 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. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in [K.S.A. 59-29a06](#) and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to [K.S.A. 22-3305](#) and amendments thereto, 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 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.

## **MASSACHUSETTS, SEE 123A §§ 1-16**

### **ALM GL ch. 123A, § 6A (2007)**

**§ 6A.** Person Committed as Sexually Dangerous to be Held in Appropriate Level of Security; Community Access Program.

Any person committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be held in the most appropriate level of security required to ensure protection of the public, correctional staff, himself and others. Any juvenile who is committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be

segregated from any adults held at such facility.

Only a person whose criminal sentence has expired or upon whom a criminal sentence was never imposed shall be entitled to apply for participation in a community access program once in every twelve months. Said program shall be administered pursuant to the rules and regulations promulgated by the department of correction. As part of its program of community access the department of correction shall establish a board known as the community access board which board shall consist of five members appointed by the commissioner of correction, consistent with the rules and regulations of the department. Membership shall include three department of correction employees and two persons who are not department of correction employees but who may be independent contractors or consultants. The non-employee members shall consist of psychiatrists or psychologists licensed by the commonwealth. The board shall evaluate residents for participation in the community access program and establish conditions to ensure the safety of the general community. The board shall have access to all records of the person being evaluated and shall give a report of its findings including dissenting views, to the chief administrative officer of the center. Such report shall be admissible in any hearing under section nine of this chapter. The board shall also conduct annual reviews of and prepare reports on the current sexual dangerousness of all persons at the treatment center, including those whose criminal sentences have not expired. The reports shall be admissible in a hearing under section nine of this chapter.

Any person participating in a community access program under this section shall continue to reside within the secure confines of MCI-Bridgewater and be under daily evaluation by treatment center personnel to determine if he presents a danger to the community. Upon approval of a person for participation in a community access program, notice shall be given to the colonel of state police, to the attorney general, to the district attorney in the district from which the person's criminal commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of Bridgewater, the police department where such person's participation in the community access program will occur the employer of persons participating in the access program, and any victim of the sexual offense from which the commitment originated. If such victim is deceased at the time of such program participation, notice of the person's participation in a community access program shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

**ALM GL ch. 123A, § 13 (2007)**

**§ 13.** Commitment of Person to Treatment Center for Examination and Diagnosis Where Court is Satisfied Probable Cause Exists; Recommendation of Qualified Examiners; Right to Counsel; Right to Retain Psychologist or Psychiatrist.

**(a)** If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, no later than

15 days prior to the expiration of said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

(b) The court shall supply to the qualified examiners copies of any juvenile and adult court records which shall contain, if available, a history of previous juvenile and adult offenses, previous psychiatric and psychological examinations and such other information as may be pertinent or helpful to the examiners in making the diagnosis and recommendation. The district attorney or the attorney general shall provide a narrative or police reports for each sexual offense conviction or adjudication as well as any psychiatric, psychological, medical or social worker records of the person named in the petition in the district attorney's or the attorney general's possession. The agency with jurisdiction over the person named in the petition shall provide such examiners with copies of any incident reports arising out of the person's incarceration or custody.

(c) The person named in the petition shall be entitled to counsel and, if indigent, the court shall appoint an attorney. All written documentation submitted to the two qualified examiners shall also be provided to counsel for the person named in the petition and to the district attorney general.

(d) Any person subject to an examination pursuant to the provisions of this to the provisions of this section may retain a psychologist or psychiatrist who meets the requirements of a qualified examiner, as defined in section 1, to perform an examination on his behalf. If the person named in the petition is indigent, the court shall provide for such qualified examiner.

**ALM GL ch. 123A, § 15 (2007)**

**§ 15. Hearing to Determine Whether Person Charged With Sexual Offense Committed Sexual Offense Where Person Incompetent to Stand Trial; Probable Cause; Commitment.**

If a person who has been charged with a sexual offense has been found incompetent to stand trial and his commitment is sought and probable cause has been determined to exist pursuant to section 12, the court, without a jury, shall hear evidence and determine whether the person did commit the act or acts charged. The hearing on the issue of whether the person did commit the act or acts charged shall comply with all procedures specified in section 14, except with respect to trial by jury. The rules of evidence applicable in criminal cases shall apply and all rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence the court shall make specific findings relative to whether the person did commit the act or acts charged; the extent to which the cause of 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 his 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 did commit the act or acts charged, the court shall enter a final order, subject to appeal by the person named in the petition and the court may proceed to

consider whether the person is a sexually dangerous person according to the procedures set forth in sections 13 and 14. Any determination made under this section shall not be admissible in any subsequent criminal proceeding.

**MINNESOTA, SEE §§ 253B.01 – 253B.23**

**Minn. Stat. § 253B.02 (2005)**

**253B.02** Definitions

Subd. 4a. Crime against the person. "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse); 609.233 (criminal neglect); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.265 (abduction); 609.27, subdivision 1, clause (1) or (2) (coercion); 609.28 (interfering with religious observance) if violence or threats of violence were used; 609.322, subdivision 1, clause (2) (solicitation); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.365 (incest); 609.498, subdivision 1 (tampering with a witness); 609.50, clause (1) (obstructing legal process, arrest, and firefighting); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.595 (damage to property); and 609.72, subdivision 3 (disorderly conduct by a caregiver).

**Minn. Stat. § 253B.08 (2005)**

**253B.08** Judicial commitment; hearing procedures

Subdivision 1. Time for commitment hearing. The hearing on the commitment petition shall be held within 14 days from the date of the filing of the petition, except that the hearing on a commitment petition pursuant to section 253B.185 shall be held within 90 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. The proceeding shall be dismissed if the proposed patient has not had a hearing on a commitment petition within the allowed time. The proposed patient, or the head of the treatment facility in which the person is held, may demand in writing at any time that the hearing be held immediately. Unless the hearing is held within five days of the date of the demand, exclusive of Saturdays, Sundays and legal holidays, the petition shall be automatically discharged if the patient is being held in a treatment facility pursuant to court order. For good cause shown, the court

may extend the time of hearing on the demand for an additional ten days.

Subd. 2. Notice of hearing. The proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least five days' notice that a hearing will be held and at least two days' notice of the time and date of the hearing, except that any person may waive notice. Notice to the proposed patient may be waived by patient's counsel.

Subd. 2a. Place of hearing. The hearing shall be conducted in a manner consistent with orderly procedure. The hearing shall be held at a courtroom meeting standards prescribed by local court rule which may be at a treatment facility.

Subd. 3. Right to attend and testify. All persons to whom notice has been given may attend the hearing and, except for the proposed patient's counsel, may testify. The court shall notify them of their right to attend the hearing and to testify. The court may exclude any person not necessary for the conduct of the proceedings from the hearings except any person requested to be present by the proposed patient. Nothing in this section shall prevent the court from ordering the sequestration of any witness or witnesses other than the petitioner or the proposed patient.

Subd. 4. Repealed, 1997 c 217 art 1 s 118

Subd. 5. Absence permitted. (a) The court may permit the proposed patient to waive the right to attend the hearing if it determines that the waiver is freely given. At the time of the hearing the patient shall not be so under the influence of drugs, medication, or other treatment so as to be hampered in participating in the proceedings. When the licensed physician or licensed psychologist attending the patient is of the opinion that the discontinuance of drugs, medication, or other treatment is not in the best interest of the patient, the court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

(b) The court, on its own motion or on the motion of any party, may exclude or excuse a proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of the proposed patient or other circumstances justifying proceeding in the absence of the proposed patient.

Subd. 5a. Witnesses. The proposed patient or the patient's counsel and the county attorney may present and cross-examine witnesses, including examiners, at the hearing. The court may in its discretion receive the testimony of any other person. Opinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties.

Subd. 6. Repealed, 1997 c 217 art 1 s 118

Subd. 7. Evidence. The court shall admit all relevant evidence at the hearing. The court shall make its determination upon the entire record pursuant to the Rules of Evidence.

In any case where the petition was filed immediately following a criminal proceeding in which the proposed patient was acquitted under section 611.026, the court shall take judicial notice of the record of the criminal proceeding.

Subd. 8. Record required. The court shall keep accurate records containing, among other appropriate materials, notations of appearances at the hearing, including witnesses, motions made and their disposition, and all waivers of rights made by the parties. The court shall take and preserve an accurate stenographic record or tape recording of the proceeding

**MISSOURI, SEE §§ 632.480 – 632.513**

**§ 632.489 R.S.Mo. (2007)**

**§ 632.489.** Probable cause determined--sexually violent predator taken into custody, when--hearing, procedure--examination by department of mental health

1. Upon filing a petition pursuant to [section 632.484](#) or [632.486](#), 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. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person under the provisions of [section 632.495](#).

2. Within seventy-two hours after a person is taken into custody pursuant to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays, 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.

3. At the probable cause hearing as provided in subsection 2 of this section, 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.

4. 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. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or psychologist as defined in [section 632.005](#) 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, place 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. Any examination performed pursuant to this section shall be completed and filed with the court within sixty days of the date the order is received by the director or other evaluator unless the court for good cause orders otherwise. One examination shall be provided at no charge by the department. All costs of any subsequent evaluations shall be assessed to the party requesting the evaluation.

**NEW HAMPSHIRE, SEE §§ 135-E:1 - 135-E:23**

**RSA 135-E:11 (2007)**  
**135-E:11** Determination.

**I.** The state shall have the burden of proving by clear and convincing evidence that the person is a sexually violent predator. If the determination is made by a jury, the verdict shall be unanimous. If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial. If the court declares a mistrial, the county attorney or attorney general may refile the petition and proceed according to the provisions of this chapter. Any retrial

shall occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with [RSA 135-E:9](#), III.

**II.** If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the department of corrections for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person no longer poses a potentially serious likelihood of danger to others. Persons who are detained or committed under this chapter shall be held at the secure psychiatric unit of the New Hampshire state prison or other appropriate facility controlled or contracted by the department of corrections if available. An order committing a person shall be valid for up to 5 years.

**III.** The determination that a person is a sexually violent predator may be appealed. The public defender shall be appointed to represent the person on appeal if the person is indigent.

**NEW JERSEY, SEE §§ 30:4-25.10 – 30:4-25.19**

**N.J. Stat. § 30:4-25.18 (2007)**

**§ 30:4-25.18.** Release from MSU

a. An individual shall be released from the MSU when his probation period or his commitment to the custody of the Commissioner of Human Services ends or upon disposition of pending criminal charges.

b. Prior to the individual's release date, the Director of the MSU and the director of the division, or his designee, shall develop a plan of appropriate division services to be provided or made available to the individual after his release from the MSU.

c. Before an individual who has committed a sexually violent offense as defined in section 3 of P.L.1998, c.71 ([C.30:4-27.26](#)) is released from the MSU, the Director of the MSU shall require that the individual be evaluated by a psychiatrist for referral for commitment under P.L.1998, c.71 ([C.30:4-27.24](#) et seq.).

**§ 30:4-27.24.** Short title

This act shall be known and may be cited as the "New Jersey Sexually Violent Predator Act."

**§ 30:4-27.25.** Findings, declarations relative to sexually violent predators

The Legislature finds and declares that:

a. Certain individuals who commit sex offenses suffer from mental abnormalities or personality disorders which make them likely to engage in repeat acts of predatory sexual violence if not treated for their mental conditions.

b. Under the existing involuntary commitment procedure, persons are subject to commitment if they are mentally ill and dangerous to self, others or property. "Mental illness" is a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, which causes the person to be dangerous to self, others or property. The nature of the mental condition from which a sexually violent predator may suffer may not always lend itself to characterization under the existing statutory standard, although civil commitment may nonetheless be warranted due to the danger the person may pose to others as a result of the mental condition.

c. Therefore, it is necessary to modify the involuntary civil commitment process in recognition of the need for commitment of those sexually violent predators who pose a danger to others should they be returned to society.

d. Moreover, because of the nature of the mental conditions from which sexually violent predators suffer and the danger they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons committed under P.L. 1987, c. 116 ([C. 30:4-27.1](#) et seq.) or otherwise confined.

#### **§ 30:4-27.11a. Findings, declarations**

The Legislature finds and declares that:

a. It is of paramount public interest to ensure the rights of all patients in inpatient psychiatric facilities, including those persons being assessed or receiving treatment on an involuntary basis in screening services and short-term care facilities as defined in section 2 of P.L. 1987, c. 116 ([C. 30:4-27.2](#));

b. The rights set forth in section 10 of P.L. 1965, c. 59 ([C. 30:4-24.2](#)) apply to any person who has been involuntarily committed to a State or county psychiatric hospital, a psychiatric unit of a county hospital or a special psychiatric hospital in accordance with the laws of this State;

c. Because involuntary assessment and treatment in a screening service and involuntary commitment to a short-term care facility involve the deprivation of a patient's liberty, it is necessary to specify and guarantee by statute the rights to which that patient is entitled, in a manner similar to that provided for a patient who is involuntarily committed to a State or county psychiatric hospital, a psychiatric unit of a county hospital or a special psychiatric hospital, while recognizing the administrative, structural and staffing features of screening services and short-term care facilities which are different from State or

county psychiatric hospitals, psychiatric units of county hospitals or special psychiatric hospitals, as well as recognizing differences between the administrative, structural and staffing features of screening services and short-term care facilities by providing a separate guarantee of rights for patients in each of these settings; and

d. All patients who are receiving assessment or treatment on an involuntary basis in screening services and short-term care facilities as defined in section 2 of P.L. 1987, c. 116 ([C. 30:4-27.2](#)) are entitled to receive professional treatment of the highest standard and, unless incompetent, to participate in their treatment and discharge planning to the fullest extent possible.

**NORTH DAKOTA, SEE §§25-03.3-01 – 25-03.3-24**

**N.D. Cent. Code, § 25-03.3-13 (2006)**

**25-03.3-13.** Sexually dangerous individual - Commitment proceeding - Report of findings.

Within sixty 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. 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

**PENNSYLVANIA, SEE §§ 6401-6409**

**42 Pa.C.S. § 6403 (2006)**

**§ 6403. Court-ordered involuntary treatment**

(a) **PERSONS SUBJECT TO INVOLUNTARY TREATMENT.**-- A person may be subject to court-ordered commitment for involuntary treatment under this chapter if the person:

- (1) Has been adjudicated delinquent for an act of sexual violence which if committed by an adult would be a violation of [18 Pa.C.S.A. § 3121](#) (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest).
- (2) Has been committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and remains in the institution or other facility upon attaining 20 years of age.
- (3) Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

(b) **PROCEDURES FOR INITIATING COURT-ORDERED INVOLUNTARY COMMITMENT.**--

- (1) Where, pursuant to the provisions of section 6358(f) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board), the court determines that a prima facie case has been presented that the child is in need of involuntary treatment under the provisions of this chapter, the court shall order that a petition be filed by the county solicitor or a designee before the court having jurisdiction of the person pursuant to Chapter 63 (relating to juvenile matters).
- (2) The petition shall be in writing in a form adopted by the department and shall set forth the facts constituting reasonable grounds to believe the individual is within the criteria for court-ordered involuntary treatment as set forth in subsection (a). The petition shall include the assessment of the person by the board as required in section 6358.
- (3) The court shall set a date for the hearing which shall be held within 30 days of the filing of the petition pursuant to paragraph (1) and direct the person to appear for the hearing. A copy of the

petition and notice of the hearing date shall be served on the person, the attorney who represented the person at the most recent dispositional review hearing pursuant to section 6358(e) and the county solicitor or a designee. The person and the attorney who represented the person shall, along with copies of the petition, also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(4) The person shall be informed that the person has a right to be assisted in the proceedings by an independent expert in the field of sexually violent behavior. If the person cannot afford to engage such an expert, the court shall allow a reasonable fee for such purpose.

(c) HEARING.-- A hearing pursuant to this chapter shall be conducted as follows:

(1) The person shall not be called as a witness without the person's consent.

(2) The person shall have the right to confront and cross-examine all witnesses and to present evidence on the person's own behalf.

(3) The hearing shall be public.

(4) A stenographic or other sufficient record shall be made.

(5) The hearing shall be conducted by the court.

(6) A decision shall be rendered within five days after the conclusion of the hearing.

(d) DETERMINATION AND ORDER.-- Upon a finding by clear and convincing evidence that the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence, an order shall be entered directing the immediate commitment of the person for inpatient involuntary treatment to a facility designated by the department. The order shall be in writing and shall be consistent with the protection of the public safety and the appropriate control, care and treatment of the person. An appeal shall not stay the execution of the order.

**SOUTH CAROLINA, SEE §§ 44-48-10 – 44-48-170**

**S.C. Code Ann. § 44-48-80 (2006)**

§ 44-48-80. Determination of probable cause; taking person into custody; hearing; evaluation.

(A) Upon filing of a petition, the court must 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.

(B) Immediately upon being taken into custody pursuant to subsection (A), 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 pursuant to subsection (A). At this hearing the court must:

- (1) verify the detainee's identity;
- (2) receive evidence and hear arguments 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.

(C) 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.

(D) If the probable cause determination is made, the court must 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.

**TEXAS, SEE §§ 841.001 – 841.150**

**Tex. Health & Safety Code § 841.081 (2006)**  
**§ 841.081.** Civil Commitment of Predator

(a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or discharge from a state hospital and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

**VIRGINIA, SEE §§ 37.2-900 – 37.2-920**

**Va. Code Ann. § 37.2-905 (2006)**

**§ 37.2-905.** Review of prisoners convicted of a sexually violent offense; review of unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review

A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or an unrestorably incompetent defendant for review pursuant to [§ 19.2-169.3](#), the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court in which the prisoner was last convicted of a sexually violent offense or in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to [§ 19.2-169.3](#).

B. In determining whether to file a petition to civilly commit a prisoner under this chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to [§ 37.2-904](#); (iii) the prisoner's institutional history and treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed. Although the Attorney General shall

consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant under this chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning, (ii) the defendant's warrant or indictment, (iii) the competency report completed pursuant to [§ 19.2-169.1](#), (iv) the report and recommendations prepared by the director of the defendant's treating facility pursuant to [§ 19.2-169.3](#), (v) the mental health evaluation completed pursuant to [§ 37.2-904](#), (vi) the defendant's criminal offense history, (vii) information about the alleged crime, and (viii) any other factor relevant to the determination of whether the defendant should be civilly committed.

D. Notwithstanding [§ 19.2-299.1](#) or any other provision of law, the Attorney General is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

E. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or incompetent defendant, or if a petition is filed but is dismissed for any reason, and the prisoner or incompetent defendant has outstanding probation or parole time to serve, the Attorney General and the Director may share any relevant information with the probation and parole officer to the extent allowed by state and federal law.

## **WASHINGTON, SEE §§ 71.09.010 – 71.09.902**

### **Rev. Code Wash. (ARCW) § 71.09.010 (2007)**

#### **§ 71.09.010. Findings**

The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act, chapter 71.05 RCW, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment act, chapter 71.05 RCW, is inadequate to address the risk to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. The legislature further finds that the prognosis for curing sexually violent offenders 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 involuntary treatment act.

**Rev. Code Wash. (ARCW) § 71.09.060 (2007)**

**§ 71.09.060. Trial -- Determination -- Commitment procedures**

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under [RCW 71A.12.230](#) may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. 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 as provided in [RCW 71.09.020\(15\)\(c\)](#), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in [RCW 9.94A.030](#).

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: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in [RCW 71.09.092](#) is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to [RCW 10.77.090\(4\)](#), and his or her commitment is sought pursuant to subsection (1) of this section, 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 under [RCW 10.77.090\(4\)](#) 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.

(3) The state shall comply with [RCW 10.77.220](#) while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to [RCW 71.09.090](#) following initial commitment under this section and in accord with the provisions of this chapter.

### **WEST VIRGINIA , SEE §§ 62-11E – 62-11E-3**

#### **W. Va. Code § 62-11E-1 (2007)**

##### **§ 62-11E-1. Legislative findings and intent.**

The Legislature finds:

(1) That a small but extremely dangerous group of sexually violent offenders exist who do not have a mental disease or defect that renders them appropriate for involuntary hospitalization pursuant to chapter twenty-seven [§§ 27-1-1 et seq.] of this code, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast, these offenders, known as sexually violent predators, generally have personality disorders and/or mental abnormalities which are largely

unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior.

(2) That the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure is inadequate to address the risk to re-offend because during confinement these predators do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement.

(3) That the prognosis for curing sexually violent predators is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under chapter twenty-seven of this code.

(4) It is therefore the purpose of this article to establish a public-private task force to identify and develop measures providing for the appropriate treatment of sexually violent predators lasting until they are no longer dangerous to the public. The measures should reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

## **WISCONSIN , SEE §§ 980.01-980.14**

### **Wis. Stat. §980.01 (2006)** **§980.01** Definitions.

In this chapter:

(1b) "Act of sexual violence" means conduct that constitutes the commission of a sexually violent offense...

(1j) "Incarceration" includes confinement in a secured correctional facility, as defined in [s. 938.02 \(15m\)](#), or a secured child caring institution, as defined in [s. 938.02 \(15g\)](#), or a secured group home, as defined in [s. 938.02 \(15p\)](#) [confinement in a juvenile correctional facility, as defined in [s. 938.02 \(10p\)](#), or a residential care center for children and youth, as defined in [s. 938.02 \(15g\)](#) ], if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under [s. 938.183](#) or [938.34](#) on the basis of a sexually violent offense.

(1m) "Likely" means more likely than not.

(2) "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.

(3) Except in [ss. 980.075](#), [980.09](#), and [980.095](#), "petitioner" means the agency or person that filed a petition under [s. 980.02](#)

(4) "Secretary" means the secretary of health and family services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in [s. 948.02 \(1\)](#) or (2), 948.025 (1), or 948.085 against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actors sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in [s. 940.225 \(1\)](#), (2), or (3), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085

(am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a)

(b) Any crime specified in [s. 940.01](#), [940.02](#), [940.03](#), [940.05](#), [940.06](#), [940.19 \(2\)](#), (4), (5), or (6), 940.195 (4) or (5), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under [s. 980.05 \(3\) \(b\)](#), to have been sexually motivated.

(bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under [s. 980.05 \(3\) \(b\)](#), to have been sexually motivated.

(c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a), (am), (b), or (bm)

(7) "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 likely that the person will engage in one or more acts of sexual violence.

(8) "Significant progress in treatment" means that the person has done all of the following:

(a) Meaningfully participated in the treatment program specifically designed to reduce his or her risk to reoffend offered at a facility described under [s. 980.065](#)

(b) Participated in the treatment program at a level that was sufficient to allow the

identification of his or her specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.

(c) Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to his or her sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.

(d) Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

(9) "Substantially probable" means much more likely than not.

(10) "Treating professional" means a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment at a facility described under [s. 980.065](#)

**Wis. Stat. § 980.06 (2006)**

**980.06. Commitment.**

If a court or jury determines that the person who is the subject of a petition under [s. 980.02](#) 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. A commitment order under this section shall specify that the person be placed in institutional care.