



SENATE BILL No. 226

January 26, 1993, Introduced by Senators GEAKE, WELBORN, BOUCHARD, DI NELLO, HONIGMAN, CISKY, EHLERS, EMMONS, SCHWARZ and ARTHURHULTZ and referred to the Committee on Mental Health, Human Resources, and Senior Citizens.

A bill to amend Act No. 258 of the Public Acts of 1974, entitled as amended "Mental health code," as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws, by adding chapter 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 258 of the Public Acts of 1974, as
2 amended, being sections 330.1001 to 330.2106 of the Michigan
3 Compiled Laws, is amended by adding chapter 10a to read as
4 follows:

CHAPTER 10A

6 SEC. 1060. AS USED IN THIS CHAPTER:

7 (A) "SEXUALLY VIOLENT HABITUAL OFFENDER" MEANS A PERSON WHO
8 HAS BEEN CONVICTED OF OR CHARGED WITH A SEXUALLY VIOLENT OFFENSE
9 AND WHO SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER

1 THAT MAKES THE PERSON LIKELY TO ENGAGE IN HABITUAL PREDATORY ACTS
2 OF SEXUAL VIOLENCE.

3 (B) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CON-
4 DITION AFFECTING THE EMOTIONAL OR VOLITIONAL CAPACITY THAT PRE-
5 DISPOSES A PERSON TO THE COMMISSION OF SEXUALLY VIOLENT OFFENSES
6 IN A DEGREE CONSTITUTING THE PERSON A MENACE TO THE HEALTH AND
7 SAFETY OF OTHERS.

8 (C) "PREDATORY" MEANS ACTS DIRECTED TOWARD STRANGERS OR
9 INDIVIDUALS WITH WHOM A RELATIONSHIP HAS BEEN ESTABLISHED OR PRO-
10 MOTED FOR THE PRIMARY PURPOSE OF VICTIMIZATION.

11 (D) "SEXUALLY VIOLENT OFFENSE" MEANS 1 OR MORE OF THE FOL-
12 LOWING COMMITTED ON, BEFORE, OR AFTER JANUARY 1, 1993:

13 (i) FIRST DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
14 SECTION 520B OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE
15 PUBLIC ACTS OF 1931, BEING SECTION 750.520B OF THE MICHIGAN
16 COMPILED LAWS.

17 (ii) SECOND DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
18 SECTION 520C OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
19 SECTION 750.520C OF THE MICHIGAN COMPILED LAWS.

20 (iii) THIRD DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
21 SECTION 520D OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
22 SECTION 750.520D OF THE MICHIGAN COMPILED LAWS.

23 (iv) FOURTH DEGREE CRIMINAL SEXUAL CONDUCT, AS DESCRIBED IN
24 SECTION 520E OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
25 SECTION 750.520E OF THE MICHIGAN COMPILED LAWS.

1 (v) ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT,
2 AS DESCRIBED IN SECTION 520G OF ACT NO. 328 OF THE PUBLIC ACTS OF
3 1931, BEING SECTION 750.520G OF THE MICHIGAN COMPILED LAWS.

4 (vi) A FELONY OFFENSE UNDER FEDERAL LAW OR ANOTHER STATE'S
5 LAW THAT UNDER THE LAWS OF THIS STATE WOULD BE A SEXUALLY VIOLENT
6 OFFENSE AS DEFINED IN THIS SECTION.

7 (vii) ANY OTHER FELONY OFFENSE UNDER THE LAWS OF THIS STATE
8 THAT AT TRIAL HAS BEEN DETERMINED BEYOND ANY REASONABLE DOUBT TO
9 HAVE BEEN SEXUALLY MOTIVATED.

10 SEC. 1061. THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH
11 A PERSON WAS CONVICTED OR CHARGED, OR THE ATTORNEY GENERAL IF
12 REQUESTED BY THE PROSECUTING ATTORNEY, MAY FILE A PETITION ALLEG-
13 ING THAT A PERSON IS A SEXUALLY VIOLENT HABITUAL OFFENDER AND
14 STATING SUFFICIENT FACTS TO SUPPORT THE ALLEGATION, IF 1 OR MORE
15 OF THE FOLLOWING CIRCUMSTANCES EXIST:

16 (A) THE PERSON WAS CONVICTED OF A SEXUALLY VIOLENT OFFENSE
17 AND HIS OR HER SENTENCE IS ABOUT TO EXPIRE, OR HAS EXPIRED ON OR
18 AFTER JANUARY 1, 1993.

19 (B) THE PERSON WAS FOUND TO HAVE COMMITTED A SEXUALLY VIO-
20 LENT OFFENSE AS A JUVENILE, AND HIS OR HER TERM OF CONFINEMENT IS
21 ABOUT TO EXPIRE, OR HAS EXPIRED ON OR AFTER JANUARY 1, 1993.

22 (C) THE PERSON WAS CHARGED WITH A SEXUALLY VIOLENT OFFENSE,
23 HAS BEEN DETERMINED TO BE INCOMPETENT TO STAND TRIAL, AND IS
24 ABOUT TO BE RELEASED, OR HAS BEEN RELEASED ON OR AFTER JANUARY 1,
25 1993.

26 (D) THE PERSON HAS BEEN FOUND NOT GUILTY BY REASON OF
27 INSANITY OF A SEXUALLY VIOLENT OFFENSE, HE OR SHE IS ABOUT TO BE

1 RELEASED, OR HAS BEEN RELEASED ON OR AFTER JANUARY 1, 1993, AND
2 IT APPEARS THAT THE PERSON MAY BE A SEXUALLY VIOLENT HABITUAL
3 OFFENDER.

4 SEC. 1062. UPON THE FILING OF A PETITION UNDER SECTION
5 1061, THE JUDGE SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
6 BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A SEXUALLY VIO-
7 LENT HABITUAL OFFENDER. IF THE DETERMINATION IS MADE THAT PROBA-
8 BLE CAUSE EXISTS, THE JUDGE SHALL DIRECT THAT THE PERSON BE TAKEN
9 INTO CUSTODY AND THE PERSON SHALL BE TRANSFERRED TO THE CENTER
10 FOR FORENSIC PSYCHIATRY FOR AN EVALUATION AS TO WHETHER THE
11 PERSON IS A SEXUALLY VIOLENT HABITUAL OFFENDER.

12 SEC. 1063. (1) NOT MORE THAN 45 DAYS AFTER THE FILING OF A
13 PETITION PURSUANT TO SECTION 1061, THE COURT SHALL CONDUCT A
14 TRIAL TO DETERMINE WHETHER THE PERSON IS A SEXUALLY VIOLENT
15 HABITUAL OFFENDER. THE PERSON, THE PROSECUTING ATTORNEY OR
16 ATTORNEY GENERAL, OR THE JUDGE HAS THE RIGHT TO DEMAND THAT THE
17 TRIAL BE BEFORE A JURY. IF NO JURY DEMAND IS MADE, THE TRIAL
18 SHALL BE BEFORE THE COURT.

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

23 (3) WHENEVER A PERSON IS SUBJECTED TO AN EXAMINATION UNDER
24 THIS CHAPTER, HE OR SHE MAY RETAIN EXPERTS OR PROFESSIONAL PER-
25 SONS TO PERFORM AN EXAMINATION ON HIS OR HER BEHALF. IF THE
26 PERSON WISHES TO BE EXAMINED BY A QUALIFIED EXPERT OR
27 PROFESSIONAL PERSON OF HIS OR HER OWN CHOICE, THE EXAMINER SHALL

1 BE PERMITTED TO HAVE REASONABLE ACCESS TO THE PERSON FOR THE
2 PURPOSE OF THE EXAMINATION, AND TO ALL RELEVANT MEDICAL AND PSY-
3 CHOLOGICAL RECORDS AND REPORTS. IF THE PERSON IS INDIGENT, THE
4 COURT SHALL, UPON THE PERSON'S REQUEST, ASSIST THE PERSON IN
5 OBTAINING AN EXPERT OR PROFESSIONAL PERSON TO PERFORM AN EXAMINA-
6 TION OR PARTICIPATE IN THE TRIAL ON THE PERSON'S BEHALF.

7 SEC. 1064. (1) THE COURT OR JURY SHALL DETERMINE WHETHER,
8 BEYOND A REASONABLE DOUBT, THE PERSON IS A SEXUALLY VIOLENT
9 HABITUAL OFFENDER. IF THE STATE ALLEGES THAT THE PRIOR SEXUALLY
10 VIOLENT OFFENSE THAT FORMS THE BASIS FOR THE PETITION FOR COMMIT-
11 MENT WAS AN ACT THAT WAS SEXUALLY MOTIVATED AS PROVIDED BY SEC-
12 TION 1060(D)(vii), THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
13 THAT THE ALLEGED SEXUALLY VIOLENT ACT WAS SEXUALLY MOTIVATED.

14 (2) IF THE COURT OR JURY DETERMINES THAT THE PERSON IS A
15 SEXUALLY VIOLENT HABITUAL OFFENDER, THE PERSON SHALL BE COMMITTED
16 TO THE CUSTODY OF THE DEPARTMENT IN A SECURE FACILITY FOR CON-
17 TROL, CARE, AND TREATMENT UNTIL SUCH TIME AS THE PERSON'S MENTAL
18 ABNORMALITY OR PERSONALITY DISORDER HAS SO CHANGED THAT THE
19 PERSON IS SAFE TO BE AT LARGE. THE CONTROL, CARE, AND TREATMENT
20 SHALL BE PROVIDED AT A FACILITY OPERATED BY THE DEPARTMENT. THE
21 FACILITY SHALL NOT BE LOCATED ON THE GROUNDS OF A STATE MENTAL
22 FACILITY OR REGIONAL HABILITATION CENTER UNLESS THE DEPARTMENT OF
23 CORRECTIONS CERTIFIES THAT THE FACILITY IS SUFFICIENTLY SECURE
24 FOR THIS POPULATION. THE INVOLUNTARY DETENTION OR COMMITMENT OF
25 PERSONS UNDER THIS CHAPTER SHALL CONFORM TO CONSTITUTIONAL
26 REQUIREMENTS FOR CARE AND TREATMENT.

1 (3) IF THE COURT OR JURY IS NOT SATISFIED BEYOND A
2 REASONABLE DOUBT THAT THE PERSON IS A SEXUALLY VIOLENT HABITUAL
3 OFFENDER, THE COURT SHALL ORDER THE PERSON'S RELEASE.

4 SEC. 1065. (1) IF THE PERSON CHARGED WITH A SEXUALLY VIO-
5 LENT OFFENSE HAS BEEN FOUND INCOMPETENT TO STAND TRIAL, AND IS
6 ABOUT TO BE OR HAS BEEN RELEASED PURSUANT TO SECTION 1044, AND
7 HIS OR HER COMMITMENT IS SOUGHT PURSUANT TO SECTION 1064, THE
8 COURT SHALL FIRST HEAR EVIDENCE AND DETERMINE WHETHER THE PERSON
9 DID COMMIT THE ACT OR ACTS CHARGED IF THE COURT DID NOT ENTER A
10 FINDING PRIOR TO DISMISSAL UNDER SECTION 1044 THAT THE PERSON
11 COMMITTED THE ACT OR ACTS CHARGED. THE HEARING ON THIS ISSUE
12 SHALL COMPLY WITH ALL THE PROCEDURES SPECIFIED IN THIS CHAPTER.
13 THE RULES OF EVIDENCE APPLICABLE IN CRIMINAL CASES APPLY TO A
14 TRIAL UNDER THIS SECTION, AND THE PERSON HAS ALL CONSTITUTIONAL
15 RIGHTS AVAILABLE TO DEFENDANTS AT CRIMINAL TRIALS, OTHER THAN THE
16 RIGHT NOT TO BE TRIED WHILE INCOMPETENT.

17 (2) AFTER HEARING EVIDENCE ON THE ISSUE, THE COURT SHALL
18 MAKE SPECIFIC FINDINGS ON WHETHER THE PERSON DID COMMIT THE ACT
19 OR ACTS CHARGED, THE EXTENT TO WHICH THE PERSON'S INCOMPETENCE OR
20 DEVELOPMENTAL DISABILITY AFFECTED THE OUTCOME OF THE HEARING,
21 INCLUDING ITS EFFECT ON THE PERSON'S ABILITY TO CONSULT WITH AND
22 ASSIST COUNSEL AND TO TESTIFY IN HIS OR HER OWN BEHALF, THE
23 EXTENT TO WHICH THE EVIDENCE COULD BE RECONSTRUCTED WITHOUT THE
24 ASSISTANCE OF THE PERSON, AND THE STRENGTH OF THE PROSECUTION'S
25 CASE. IF, AFTER THE CONCLUSION OF THE HEARING ON THIS ISSUE, THE
26 COURT FINDS, BEYOND A REASONABLE DOUBT, THAT THE PERSON DID
27 COMMIT THE ACT OR ACTS CHARGED, IT SHALL ENTER A FINAL ORDER,

1 APPEALABLE BY THE PERSON, ON THAT ISSUE, AND MAY PROCEED TO
2 CONSIDER WHETHER THE PERSON SHOULD BE COMMITTED PURSUANT TO SEC-
3 TION 1064.

4 SEC. 1066. A PERSON COMMITTED UNDER THIS CHAPTER SHALL BE
5 EXAMINED AT LEAST ONCE EACH YEAR. THE PERSON MAY RETAIN OR, IF
6 HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT MAY APPOINT A
7 QUALIFIED EXPERT OR A PROFESSIONAL PERSON TO EXAMINE HIM OR HER.
8 THE EXPERT OR PROFESSIONAL PERSON SHALL HAVE ACCESS TO ALL
9 RECORDS CONCERNING THE PERSON. THE DEPARTMENT SHALL PROVIDE AN
10 ANNUAL REPORT TO THE COURT THAT COMMITTED THE PERSON UNDER THIS
11 CHAPTER.

12 SEC. 1067. (1) IF THE DIRECTOR OF THE DEPARTMENT OR THE
13 DIRECTOR OF THE FACILITY IN WHICH THE PERSON HAS BEEN COMMITTED
14 DETERMINES THAT THE PERSON'S MENTAL ABNORMALITY HAS CHANGED SO
15 THAT THE PERSON IS NOT LIKELY TO COMMIT SEXUALLY VIOLENT OFFENSES
16 IF RELEASED, THE DIRECTOR OF THE DEPARTMENT OR THE DIRECTOR OF
17 THE FACILITY SHALL AUTHORIZE THE PERSON TO PETITION THE COURT FOR
18 RELEASE. THE PETITION SHALL BE SERVED UPON THE COURT AND THE
19 PROSECUTING ATTORNEY.

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

26 (3) THE HEARING SHALL BE BEFORE A JURY IF DEMANDED BY EITHER
27 THE PETITIONER OR THE PROSECUTING ATTORNEY OR ATTORNEY GENERAL.

1 THE BURDEN OF PROOF SHALL BE UPON THE PROSECUTING ATTORNEY OR
2 ATTORNEY GENERAL TO SHOW BEYOND A REASONABLE DOUBT THAT THE
3 PETITIONER'S MENTAL ABNORMALITY OR PERSONALITY DISORDER REMAINS
4 SO THAT THE PETITIONER IS NOT SAFE TO BE AT LARGE AND THAT IF
5 DISCHARGED IS LIKELY TO COMMIT SEXUALLY VIOLENT OFFENSES.

6 SEC. 1068. (1) NOTWITHSTANDING SECTION 1067, A PERSON MAY
7 PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE
8 DIRECTOR OF THE DEPARTMENT OR THE DIRECTOR OF THE FACILITY. THE
9 DIRECTOR OF THE DEPARTMENT SHALL PROVIDE THE COMMITTED PERSON
10 WITH AN ANNUAL WRITTEN NOTICE OF THE PERSON'S RIGHT TO PETITION
11 THE COURT FOR RELEASE OVER THE DEPARTMENT DIRECTOR'S OR FACILITY
12 DIRECTOR'S OBJECTION. THE NOTICE SHALL CONTAIN A WAIVER OF
13 RIGHTS. THE DIRECTOR OF THE DEPARTMENT SHALL FORWARD THE NOTICE
14 AND WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT REQUIRED
15 UNDER SECTION 1066.

16 (2) IF THE PERSON DOES NOT AFFIRMATIVELY WAIVE THE RIGHT TO
17 PETITION, THE COURT SHALL SET A SHOW CAUSE HEARING TO DETERMINE
18 WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
19 PERSON'S CONDITION HAS SO CHANGED THAT HE OR SHE IS SAFE TO BE AT
20 LARGE. THE COMMITTED PERSON HAS A RIGHT TO HAVE AN ATTORNEY REP-
21 RESENT HIM OR HER AT THE SHOW CAUSE HEARING, BUT THE COMMITTED
22 PERSON IS NOT ENTITLED TO BE PRESENT AT THE SHOW CAUSE HEARING.
23 IF THE COURT AT THE SHOW CAUSE HEARING DETERMINES THAT PROBABLE
24 CAUSE EXISTS TO BELIEVE THAT THE PERSON'S MENTAL ABNORMALITY HAS
25 SO CHANGED THAT THE PERSON IS SAFE TO BE AT LARGE AND WILL NOT
26 ENGAGE IN SEXUALLY VIOLENT OFFENSES IF DISCHARGED, THEN THE COURT
27 SHALL SET A HEARING ON THE ISSUE. THE COMMITTED PERSON IS

1 ENTITLED TO BE PRESENT AT THE HEARING AND TO HAVE THE BENEFIT OF
2 ALL CONSTITUTIONAL PROTECTIONS THAT WERE AFFORDED TO HIM OR HER
3 AT THE INITIAL COMMITMENT PROCEEDING. THE PROSECUTING ATTORNEY
4 OR THE ATTORNEY GENERAL IF REQUESTED BY THE COUNTY SHALL REPRESENT
5 THE STATE AND SHALL HAVE A RIGHT TO A JURY TRIAL AND TO HAVE
6 THE COMMITTED PERSON EVALUATED BY EXPERTS CHOSEN BY THE STATE.
7 THE COMMITTED PERSON ALSO HAS THE RIGHT TO HAVE EXPERTS EVALUATE
8 HIM OR HER ON HIS OR HER BEHALF AND THE COURT SHALL APPOINT AN
9 EXPERT IF THE PERSON IS INDIGENT AND REQUESTS AN APPOINTMENT.
10 THE BURDEN OF PROOF AT THE HEARING IS UPON THE STATE TO PROVE
11 BEYOND A REASONABLE DOUBT THAT THE COMMITTED PERSON'S MENTAL
12 ABNORMALITY REMAINS SUCH THAT THE PERSON IS NOT SAFE TO BE AT
13 LARGE AND IF RELEASED WILL ENGAGE IN SEXUALLY VIOLENT OFFENSES.

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

1 FRIVOLOUS GROUNDS AND IF SO SHALL DENY THE PETITION WITHOUT A
2 HEARING.

3 SEC. 1070. THE DEPARTMENT IS RESPONSIBLE FOR ALL COSTS
4 RELATED TO THE EVALUATION AND TREATMENT OF PERSONS COMMITTED TO
5 ITS CUSTODY UNDER ANY PROVISION OF THIS CHAPTER. REIMBURSEMENT
6 MAY BE OBTAINED BY THE DEPARTMENT PURSUANT TO CHAPTER 8 FOR THE
7 COST AND CARE OF TREATMENT OF PERSONS COMMITTED TO ITS CUSTODY.

8 SEC. 1071. IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO
9 BE RELEASED UNDER THIS CHAPTER, THE DEPARTMENT SHALL RELEASE REL-
10 EVANT INFORMATION THAT IS NECESSARY TO PROTECT THE PUBLIC CON-
11 CERNING A SPECIFIC SEXUALLY VIOLENT HABITUAL OFFENDER COMMITTED
12 UNDER THIS CHAPTER.