

**SUBSTITUTE FOR
SENATE BILL NO. 649**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 10A

2 SEC. 1060. AS USED IN THIS CHAPTER:

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

4 (B) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CON-
5 DITION THAT AFFECTS AN INDIVIDUAL'S EMOTIONAL OR VOLITIONAL
6 CAPACITY AND THAT PREDISPOSES THE INDIVIDUAL TO COMMIT VIOLENT
7 OFFENSES TO A DEGREE THAT RENDERS THE INDIVIDUAL A MENACE TO THE
8 HEALTH AND SAFETY OF OTHERS.

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

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

2 (i) A VIOLATION OF SECTION 83 OF THE MICHIGAN PENAL CODE,
3 1931 PA 328, MCL 750.83, CONCERNING ASSAULT.

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

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

9 (iv) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE,
10 1931 PA 328, MCL 750.520B, CONCERNING CRIMINAL SEXUAL CONDUCT.

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

14 (E) "VIOLENT PREDATOR" MEANS AN INDIVIDUAL WHO MEETS ALL OF
15 THE FOLLOWING:

16 (i) HAS BEEN CONVICTED OF A VIOLENT OFFENSE AND, IN ADDITION
17 TO THE CONVICTION FOR THE VIOLENT OFFENSE, HAS COMMITTED 2 OR
18 MORE MURDERS OR VOLUNTARY MANSLAUGHTERS THAT ARE SEPARATE FROM
19 AND DO NOT ARISE OUT OF THE INCIDENT OR INCIDENTS THAT WERE THE
20 BASIS FOR THE VIOLENT OFFENSE AS EVIDENCED BY A CERTIFIED COPY OF
21 THE COURT RECORD OF A CONVICTION IN THIS STATE, ANOTHER STATE,
22 FEDERAL COURT, OR A FOREIGN COUNTRY.

23 (ii) SUFFERS FROM A MENTAL ABNORMALITY THAT MAKES THE INDI-
24 VIDUAL LIKELY TO ENGAGE IN FUTURE PREDATORY ACTS OF VIOLENCE.

25 SEC. 1061. (1) THE LEGISLATURE FINDS THAT A SMALL BUT
26 EXTREMELY DANGEROUS GROUP OF VIOLENT PREDATORS EXISTS WHO DO NOT
27 HAVE A MENTAL ILLNESS THAT RENDERS THEM APPROPRIATE FOR THE

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1 EXISTING CIVIL COMMITMENT PROCESS THAT IS DESIGNED TO PROVIDE
2 TREATMENT TO INDIVIDUALS WITH SERIOUS MENTAL ILLNESS. THE LEGIS-
3 LATURE ALSO FINDS THAT THE LIKELIHOOD OF A VIOLENT PREDATOR
4 ENGAGING IN REPEAT ACTS OF PREDATORY VIOLENCE IS HIGH. THE LEG-
5 ISLATURE ALSO FINDS THAT THE PROGNOSIS FOR CURING THIS SMALL
6 GROUP OF VIOLENT PREDATORS IS POOR, THAT THE TREATMENT NEEDS OF
7 THIS POPULATION ARE VERY LONG-TERM, AND THAT THE TREATMENT MODAL-
8 ITIES FOR THIS POPULATION ARE VERY DIFFERENT FROM THE TRADITIONAL
9 TREATMENT MODALITIES FOR INDIVIDUALS WHO ARE APPROPRIATE FOR COM-
10 MITMENT AND TREATMENT UNDER THIS CODE.

11 (2) OTHER THAN THE DEFINITION SECTIONS OF CHAPTER 1, THE OTHER
12 CHAPTERS OF THIS CODE DO NOT APPLY TO THIS CHAPTER AND THIS CHAPTER
13 DOES NOT APPLY TO THE OTHER CHAPTERS OF THIS CODE.

14

15 SEC. 1062. (1) IF THE AGENCY THAT HAS JURISDICTION OVER AN
16 INDIVIDUAL DESCRIBED IN SECTION 1063 DETERMINES THAT THE INDIVID-
17 UAL MAY BE A VIOLENT PREDATOR, THEN NOT LATER THAN 6 MONTHS BEFORE
18 THE ANTICIPATED DATE OF THE EXPIRATION OF THE INDIVIDUAL'S MAXIMUM
19 SENTENCE AND ANTICIPATED DATE OF RELEASE BY THE AGENCY, THE
20 AGENCY SHALL PROVIDE WRITTEN NOTIFICATION OF THE ANTICIPATED DATE
21 OF RELEASE TO THE ATTORNEY GENERAL AND TO EACH VICTIM WHO HAS
22 REQUESTED NOTIFICATION OF ANY CHANGE IN THE INDIVIDUAL'S STATUS
23 UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO
24 780.834.

25 (2) IF THE AGENCY OR AN AGENCY EMPLOYEE IN GOOD FAITH MAKES
26 A DETERMINATION OR GIVES NOTICE IN COMPLIANCE WITH SUBSECTION

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1 (1), THE AGENCY OR THE EMPLOYEE IS NOT LIABLE IN A CIVIL ACTION
2 FOR DAMAGES BASED ON THE DETERMINATION OR NOTICE.

3 SEC. 1063. THE ATTORNEY GENERAL MAY FILE A PETITION ALLEG-
4 ING THAT AN INDIVIDUAL IS A VIOLENT PREDATOR AND STATING SUFFI-
5 CIENT FACTS TO SUPPORT THE ALLEGATION, IF THE INDIVIDUAL WAS CON-
6 VICTED OF A VIOLENT OFFENSE AND HIS OR HER MAXIMUM SENTENCE IS
7 ABOUT TO EXPIRE, OR HAS EXPIRED, ON OR AFTER JANUARY 1, 1999, AND
8 IN ADDITION TO THE CONVICTION FOR THE VIOLENT OFFENSE HAS COMMIT-
9 TED 2 OR MORE MURDERS OR VOLUNTARY MANSLAUGHTERS THAT ARE SEPA-
10 RATE FROM AND DO NOT ARISE OUT OF THE INCIDENT OR INCIDENTS THAT
11 WERE THE BASIS FOR THE VIOLENT OFFENSE AS EVIDENCED BY A CERTI-
12 FIED COPY OF THE COURT RECORD OF A CONVICTION IN THIS STATE,
13 ANOTHER STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

14 SEC. 1064. UPON THE FILING OF A PETITION UNDER SECTION
15 1063, THE JUDGE SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
16 BELIEVE THAT THE INDIVIDUAL NAMED IN THE PETITION IS A VIOLENT
17 PREDATOR. IF THE DETERMINATION IS MADE THAT SUCH PROBABLE CAUSE
18 EXISTS, THE JUDGE SHALL ORDER THAT THE INDIVIDUAL BE EVALUATED BY
19 THE CENTER FOR FORENSIC PSYCHIATRY TO DETERMINE WHETHER OR NOT
20 THE INDIVIDUAL IS A VIOLENT PREDATOR. THE AGENCY SHALL ACCEPT
21 THE INDIVIDUAL BACK AFTER THE COMPLETION OF THE EVALUATION. IN
22 NO EVENT SHALL THE INDIVIDUAL BE RELEASED FROM CONFINEMENT BEFORE
23 TRIAL. IF AN INDIVIDUAL'S MAXIMUM SENTENCE WOULD EXPIRE AND HE
24 OR SHE WOULD BE RELEASED BEFORE COMPLETION OF A TRIAL UNDER THIS
25 CHAPTER, THE COURT SHALL ORDER THAT THE INDIVIDUAL BE CONFINED IN
26 A SECURE FACILITY.

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1 SEC. 1065. (1) NOT MORE THAN 45 DAYS AFTER THE FILING OF A
2 PETITION UNDER SECTION 1063, THE COURT SHALL CONDUCT A TRIAL TO
3 DETERMINE WHETHER THE INDIVIDUAL IS A VIOLENT PREDATOR. THE
4 INDIVIDUAL, THE ATTORNEY GENERAL, OR THE JUDGE HAS THE RIGHT TO
5 DEMAND THAT THE TRIAL BE BEFORE A JURY. IF NO JURY DEMAND IS
6 MADE, THE TRIAL SHALL BE BEFORE THE COURT.

7 (2) AT ALL STAGES OF THE PROCEEDINGS UNDER THIS CHAPTER, AN
8 INDIVIDUAL SUBJECT TO THIS CHAPTER IS ENTITLED TO THE ASSISTANCE
9 OF COUNSEL. IF THE INDIVIDUAL IS INDIGENT, THE COURT SHALL
10 APPOINT COUNSEL TO ASSIST HIM OR HER.

11 (3) IF AN INDIVIDUAL IS SUBJECTED TO AN EXAMINATION UNDER
12 THIS CHAPTER, HE OR SHE MAY RETAIN AN EXPERT OR PROFESSIONAL
13 PERSON OF HIS OR HER CHOICE TO PERFORM AN EXAMINATION ON HIS OR
14 HER BEHALF. THE SELECTED EXPERT OR PROFESSIONAL PERSON MAY HAVE
15 REASONABLE ACCESS TO THE INDIVIDUAL FOR THE PURPOSE OF THE EXAMI-
16 NATION, AND TO ALL RELEVANT MEDICAL AND PSYCHOLOGICAL RECORDS AND
17 REPORTS. IF THE INDIVIDUAL IS INDIGENT AND SO REQUESTS, THE
18 COURT SHALL APPOINT A QUALIFIED EXPERT OR PROFESSIONAL PERSON TO
19 PERFORM AN EXAMINATION OR PARTICIPATE IN THE TRIAL ON THE
20 INDIVIDUAL'S BEHALF.

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

24 (2) IF THE COURT OR JURY DETERMINES IN A TRIAL CONDUCTED
25 UNDER SECTION 1065 THAT THE INDIVIDUAL IS A VIOLENT PREDATOR, THE
26 INDIVIDUAL SHALL BE COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF
27 COMMUNITY HEALTH IN A SECURE FACILITY FOR CONTROL AND TREATMENT

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1 UNTIL SUCH TIME AS THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO
2 CHANGED THAT THE INDIVIDUAL IS SAFE TO BE DISCHARGED. THE CON-
3 TROL AND TREATMENT SHALL BE PROVIDED AT A FACILITY MANAGED BY, OR
4 UNDER CONTRACT TO, THE DEPARTMENT OF COMMUNITY HEALTH. THE
5 FACILITY SHALL NOT BE LOCATED ON THE GROUNDS OF A STATE PSYCHIAT-
6 RIC HOSPITAL OR REGIONAL CENTER FOR DEVELOPMENTAL DISABILITIES
7 UNLESS THE AGENCY AND THE DEPARTMENT OF COMMUNITY HEALTH CERTIFY
8 THAT THE FACILITY IS SUFFICIENTLY APPROPRIATE AND SECURE FOR THIS
9 INDIVIDUAL.

10 (3) IF THE COURT OR JURY IN A TRIAL CONDUCTED UNDER SECTION
11 1065 IS NOT SATISFIED BEYOND A REASONABLE DOUBT THAT THE INDIVID-
12 UAL IS A VIOLENT PREDATOR, THE COURT SHALL ORDER THE INDIVIDUAL'S
13 RELEASE.

14 SEC. 1067. AN INDIVIDUAL COMMITTED UNDER THIS CHAPTER SHALL
15 BE EXAMINED AT LEAST ONCE EVERY 3 YEARS. THE INDIVIDUAL MAY
16 RETAIN OR, IF HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT
17 MAY APPOINT, A QUALIFIED EXPERT OR OTHER PROFESSIONAL PERSON TO
18 EXAMINE HIM OR HER. THE EXPERT OR PROFESSIONAL PERSON HAS ACCESS
19 TO ALL PERTINENT RECORDS CONCERNING THE INDIVIDUAL. THE DEPART-
20 MENT OF COMMUNITY HEALTH SHALL PROVIDE AN ANNUAL REPORT TO THE
21 COURT THAT COMMITTED THE INDIVIDUAL UNDER THIS CHAPTER.

22 SEC. 1068. (1) IF THE DIRECTOR OF THE DEPARTMENT OF COMMU-
23 NITY HEALTH DETERMINES THAT THE INDIVIDUAL'S MENTAL ABNORMALITY
24 HAS CHANGED SO THAT THE INDIVIDUAL IS NOT LIKELY TO ENGAGE IN
25 FUTURE PREDATORY ACTS OF VIOLENCE IF RELEASED, THE DIRECTOR OF
26 THE DEPARTMENT OF COMMUNITY HEALTH SHALL AUTHORIZE THE INDIVIDUAL
27 TO PETITION THE COURT FOR DISCHARGE. THE PETITION SHALL BE

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1 SERVED UPON THE COURT AND THE ATTORNEY GENERAL. THE ATTORNEY
2 GENERAL SHALL NOTIFY EACH VICTIM WHO WAS REQUIRED TO BE NOTIFIED
3 BY THE AGENCY UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87,
4 MCL 780.751 TO 780.834.

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

10 (3) A HEARING UNDER THIS SECTION SHALL BE BEFORE A JURY IF
11 DEMANDED BY EITHER THE PETITIONER OR THE ATTORNEY GENERAL. THE
12 ATTORNEY GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE
13 DOUBT THAT THE PETITIONER'S MENTAL ABNORMALITY REMAINS SO THAT
14 THE PETITIONER IS NOT SAFE TO BE DISCHARGED AND THAT IF DIS-
15 CHARGED IS LIKELY TO COMMIT 1 OR MORE FUTURE PREDATORY ACTS OF
16 VIOLENCE.

17 SEC. 1069. (1) NOTWITHSTANDING SECTION 1068, AN INDIVIDUAL
18 MAY PETITION THE COURT FOR DISCHARGE NOT MORE THAN ONCE EVERY 12
19 MONTHS WITHOUT THE APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF
20 COMMUNITY HEALTH. THE DIRECTOR OF THE DEPARTMENT OF COMMUNITY
21 HEALTH SHALL PROVIDE THE COMMITTED INDIVIDUAL WITH AN ANNUAL
22 WRITTEN NOTICE OF THE INDIVIDUAL'S RIGHT TO PETITION THE COURT
23 FOR DISCHARGE OVER THE DEPARTMENT DIRECTOR'S OBJECTION. THE
24 NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR OF THE
25 DEPARTMENT OF COMMUNITY HEALTH SHALL FORWARD THE NOTICE AND
26 WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT REQUIRED UNDER
27 SECTION 1067.

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1 (2) IF A COMMITTED INDIVIDUAL PETITIONS FOR DISCHARGE UNDER
2 THIS SECTION, THE COURT SHALL SET A SHOW CAUSE HEARING TO DETER-
3 MINE WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
4 INDIVIDUAL'S CONDITION HAS SO CHANGED THAT HE OR SHE IS SAFE TO
5 BE DISCHARGED. THE COMMITTED INDIVIDUAL HAS A RIGHT TO HAVE AN
6 ATTORNEY REPRESENT HIM OR HER AT THE SHOW CAUSE HEARING BUT IS
7 NOT ENTITLED TO BE PRESENT AT THE SHOW CAUSE HEARING. IF THE
8 COURT AT THE SHOW CAUSE HEARING DETERMINES THAT PROBABLE CAUSE
9 EXISTS TO BELIEVE THAT THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO
10 CHANGED THAT THE INDIVIDUAL IS SAFE TO BE DISCHARGED AND WILL NOT
11 ENGAGE IN FUTURE PREDATORY ACTS OF VIOLENCE IF DISCHARGED, THEN
12 THE COURT SHALL SET A HEARING ON THE ISSUE. SUBJECT TO
13 SECTION 1070, THE COMMITTED INDIVIDUAL IS ENTITLED TO BE PRESENT
14 AT THE HEARING AND TO HAVE THE BENEFIT OF ALL CONSTITUTIONAL PRO-
15 TECTIONS THAT WERE AFFORDED TO HIM OR HER AT THE INITIAL COMMIT-
16 MENT PROCEEDING. THE ATTORNEY GENERAL SHALL REPRESENT THE STATE
17 AND HAS THE RIGHT TO A JURY TRIAL AND TO HAVE THE COMMITTED INDI-
18 VIDUAL EVALUATED BY EXPERTS CHOSEN BY THE STATE. THE COMMITTED
19 INDIVIDUAL ALSO HAS THE RIGHT TO HAVE EXPERTS EVALUATE HIM OR HER
20 ON HIS OR HER BEHALF. THE COURT SHALL APPOINT AN EXPERT IF THE
21 INDIVIDUAL IS INDIGENT AND REQUESTS AN APPOINTMENT. THE ATTORNEY
22 GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT
23 THE COMMITTED INDIVIDUAL'S MENTAL ABNORMALITY HAS NOT CHANGED AND
24 THAT THE INDIVIDUAL IS NOT SAFE TO BE DISCHARGED AND IF DIS-
25 CHARGED WILL ENGAGE IN 1 OR MORE FUTURE PREDATORY ACTS OF
26 VIOLENCE.

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1 SEC. 1070. NOTHING IN THIS CHAPTER PROHIBITS AN INDIVIDUAL
2 FROM FILING A PETITION FOR DISCHARGE UNDER THIS CHAPTER.
3 PURSUANT TO SECTION 1069, IF AN INDIVIDUAL HAS PREVIOUSLY FILED A
4 PETITION FOR DISCHARGE WITHOUT THE APPROVAL OF THE DIRECTOR OF
5 THE DEPARTMENT OF COMMUNITY HEALTH AND THE COURT DETERMINED,
6 EITHER UPON REVIEW OF THE PETITION OR FOLLOWING A HEARING, THAT
7 THE PETITIONER'S PETITION WAS FRIVOLOUS OR THAT THE PETITIONER'S
8 CONDITION HAD NOT SO CHANGED THAT HE OR SHE WAS SAFE TO BE DIS-
9 CHARGED, THEN THE COURT SHALL DENY THE SUBSEQUENT PETITION UNLESS
10 THE PETITION CONTAINS FACTS UPON WHICH A COURT COULD FIND THAT
11 THE CONDITION OF THE PETITIONER HAD SO CHANGED THAT A HEARING WAS
12 WARRANTED. UPON RECEIPT OF A FIRST OR SUBSEQUENT PETITION FROM A
13 COMMITTED INDIVIDUAL WITHOUT THE APPROVAL OF THE DIRECTOR OF THE
14 DEPARTMENT OF COMMUNITY HEALTH OR THE DIRECTOR OF THE FACILITY
15 MANAGED BY THE DEPARTMENT OF COMMUNITY HEALTH, THE COURT SHALL
16 REVIEW THE PETITION AND DETERMINE IF THE PETITION IS BASED UPON
17 FRIVOLOUS GROUNDS AND IF SO SHALL DENY THE PETITION WITHOUT A
18 HEARING.

19 SEC. 1071. IT IS THE INTENT OF THE LEGISLATURE TO SEPARATE
20 AND PRESERVE THE FUNDS APPROPRIATED FOR THE TREATMENT OF INDIVID-
21 UALS UNDER THE OTHER CHAPTERS OF THIS CODE FROM THE FUNDS APPRO-
22 PRIATED FOR THE ADMINISTRATION OF THIS CHAPTER.