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HOUSE BILL 363

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Sanchez

AN ACT

RELATING TO THE INVOLUNTARY COMMITMENT OF SEXUAL PREDATORS;  
ENACTING THE SEXUAL PREDATOR COMMITMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the  
"Sexual Predator Commitment Act".

Section 2. LEGISLATIVE FINDINGS. -- The legislature finds  
that:

A. there exists an extremely dangerous group of  
sexually violent predators who have a mental abnormality or  
personality disorder and who are likely to engage in repeat  
acts of sexual violence if not treated for their mental  
abnormality or personality disorder;

B. because the existing civil commitment  
procedures are inadequate to address the special needs of

1 sexually violent predators and the risks they present to  
2 society, a separate involuntary civil commitment process for  
3 the potentially long-term control, care and treatment of  
4 sexually violent predators is necessary; and

5 C. because of the nature of the mental  
6 abnormalities or personality disorders from which sexually  
7 violent predators suffer, and the dangers they present, it is  
8 necessary to house involuntarily committed sexually violent  
9 predators in an environment separate from persons otherwise  
10 involuntarily committed.

11 Section 3. DEFINITIONS.--As used in the Sexual Predator  
12 Commitment Act:

13 A. "agency with jurisdiction" means the agency  
14 that releases upon lawful order or authority a person serving  
15 a sentence or term of confinement and includes the corrections  
16 department, the department of health and the children, youth  
17 and families department;

18 B. "committed person" means a person who has been  
19 found to be a sexually violent predator and committed to the  
20 custody of the department, whether in a secure commitment  
21 facility, a transitional release program or a conditional  
22 release program;

23 C. "department" means the department of health;

24 D. "likely to engage in repeat acts of sexual  
25 violence" means the person's propensity to commit sexually

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1 violent offenses is of such a degree as to pose a menace to  
2 the health and safety of others;

3 E. "mental abnormality" means a congenital or  
4 acquired condition affecting the emotional or volitional  
5 capacity that predisposes a person to commit sexually violent  
6 offenses in a degree constituting the person a menace to the  
7 health and safety of others;

8 F. "potential predator" means a person who is a  
9 potential or actual subject of proceedings pursuant to the  
10 Sexual Predator Commitment Act;

11 G. "secretary" means the secretary of health;

12 H. "sexually motivated" means that one of the  
13 purposes for which a defendant committed a crime was for the  
14 purpose of the defendant's sexual gratification;

15 I. "sexually violent offense" means:

16 (1) criminal sexual penetration, as described  
17 in Section 30-9-11 NMSA 1978;

18 (2) sexual exploitation of children, as  
19 described in Section 30-6A-3 or 30-6A-4 NMSA 1978;

20 (3) criminal sexual contact in the fourth  
21 degree, as described in Subsection C of Section 30-9-12 NMSA  
22 1978;

23 (4) criminal sexual contact of a minor, as  
24 described in Section 30-9-13 NMSA 1978;

25 (5) incest, as described in Section 30-10-3

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1 NMSA 1978;

2 (6) aggravated indecent exposure, as  
3 described in Section 30-9-14.3 NMSA 1978;

4 (7) child luring, as described in Subsection  
5 B of Section 30-37-3.2 NMSA 1978;

6 (8) an attempt as described in Section  
7 30-28-1 NMSA 1978, conspiracy as described in Section 30-28-2  
8 NMSA 1978 or criminal solicitation as described in Section  
9 30-28-3 NMSA 1978 of an offense described in Paragraphs (1)  
10 through (7) of this subsection;

11 (9) any conviction for a felony offense in  
12 effect at any time prior to the effective date of the Sexual  
13 Predator Commitment Act that is comparable to an offense  
14 described in Paragraphs (1) through (8) of this subsection or  
15 any federal or other state conviction for a felony offense  
16 that, if committed in this state, would be a sexually violent  
17 offense pursuant to Paragraphs (1) through (8) of this  
18 subsection; or

19 (10) any crime, except those described in  
20 Paragraphs (1) through (9) of this subsection, that either at  
21 the time of sentencing for the offense or subsequently during  
22 civil commitment proceedings pursuant to the Sexual Predator  
23 Commitment Act, has been determined beyond a reasonable doubt  
24 to have been sexually motivated;

25 J. "sexually violent predator" means a person who

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1 has been convicted of or charged with a sexually violent  
2 offense and who suffers from a mental abnormality or  
3 personality disorder that makes the person likely to engage in  
4 repeat acts of sexual violence;

5 K. "transitional release" means any halfway house,  
6 work release or other placement designed to assist the  
7 person's adjustment and reintegration into the community once  
8 released from commitment; and

9 L. "treatment staff" means the persons, agencies  
10 or firms employed by or contracted with the secretary to  
11 provide treatment, supervision or other services for committed  
12 persons.

13 Section 4. NOTICE OF RELEASE OF POTENTIAL PREDATOR--  
14 EVALUATION BY MULTI-DISCIPLINARY TEAM AND ATTORNEY GENERAL. --

15 A. When it appears to an agency with jurisdiction  
16 that a person may be a sexually violent predator, the agency  
17 shall give written notice to the attorney general and the  
18 multi-disciplinary team established in Subsection D of this  
19 section. The notice shall be given no less than ninety days  
20 prior to:

21 (1) the anticipated release from total  
22 confinement of a person who has been convicted of a sexually  
23 violent offense, except that in the case of persons who are  
24 returned to confinement for no more than ninety days as a  
25 result of revocation of parole or other post-release

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1 supervision, written notice shall be given as soon as  
2 practicable following the person's readmission to confinement;

3 (2) the release of a person who has been  
4 charged with a sexually violent offense and who has been  
5 determined to be incompetent to stand trial; or

6 (3) the release of a person who has been  
7 found not guilty by reason of insanity of a sexually violent  
8 offense.

9 B. The agency with jurisdiction shall inform the  
10 attorney general and the multi-disciplinary team of the  
11 following:

12 (1) the potential predator's name,  
13 identifying factors, anticipated future residence and offense  
14 history; and

15 (2) documentation of institutional adjustment  
16 and any treatment received.

17 C. The secretary of corrections shall establish a  
18 multi-disciplinary team, which may include individuals from  
19 other state agencies, to review available records of each  
20 person referred to the team pursuant to Subsection A of this  
21 section. The team, within thirty days of receiving notice,  
22 shall assess whether the potential predator is a sexually  
23 violent predator. The team shall notify the attorney general  
24 of its assessment.

25 D. The attorney general shall appoint a

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1 prosecutor's review committee to review the records of each  
2 person referred to the attorney general pursuant to Subsection  
3 A of this section. The prosecutor's review committee shall  
4 assist the attorney general in the determination of whether  
5 the person is a sexually violent predator. The assessment of  
6 the multi-disciplinary team shall be made available to the  
7 attorney general and the prosecutor's review committee.

8 E. The agency with jurisdiction and its employees  
9 and officials, members of the multi-disciplinary team, members  
10 of the prosecutor's review committee and individuals  
11 contracting, appointed or volunteering to perform services  
12 pursuant to this section shall be immune from liability for  
13 any good-faith conduct under this section.

14 F. The provisions of this section are not  
15 jurisdictional, and failure to comply with its provisions does  
16 not prevent the attorney general from proceeding against a  
17 person otherwise subject to commitment pursuant to the Sexual  
18 Predator Commitment Act.

19 Section 5. PETITION FOR COMMITMENT.--

20 A. Upon a determination by the attorney general  
21 and the prosecutor's review committee pursuant to Section 4 of  
22 the Sexual Predator Commitment Act that a potential predator  
23 is a sexually violent predator, the attorney general may file  
24 a petition with the district court, within seventy-five days  
25 of the date the attorney general received the written notice

1 by the agency of jurisdiction as provided in Subsection A of  
2 Section 4 of the Sexual Predator Commitment Act, alleging that  
3 the person is a sexually violent predator and stating  
4 sufficient facts to support the allegation.

5 B. The provisions of this section are not  
6 jurisdictional, and failure to comply with its provisions in  
7 no way prevents the attorney general from proceeding against a  
8 person otherwise subject to the provisions of the Sexual  
9 Predator Commitment Act.

10 Section 6. DETERMINATION OF PROBABLE CAUSE. --

11 A. Upon filing of a petition pursuant to Section 5  
12 of the Sexual Predator Commitment Act, the district court  
13 shall determine whether probable cause exists to believe that  
14 the potential predator is a sexually violent predator. If the  
15 court determines that probable cause exists, the court shall  
16 direct that the potential predator be taken into custody.

17 B. Within seventy-two hours after a potential  
18 predator is taken into custody pursuant to Subsection A of  
19 this section, the potential predator shall be provided with  
20 notice of, and an opportunity to appear in person at, a  
21 hearing to contest probable cause as to whether the potential  
22 predator is a sexually violent predator. At the hearing, the  
23 court shall:

24 (1) verify the potential predator's identity;

25 and



1 (2) determine whether probable cause exists  
2 to believe that the potential predator is a sexually violent  
3 predator. The state may rely upon the petition or supplement  
4 the petition with additional documentary evidence or live  
5 testimony.

6 C. At the probable cause hearing, the potential  
7 predator has the following rights in addition to the rights  
8 previously specified:

9 (1) to be represented by counsel;

10 (2) to present evidence on the potential  
11 predator's behalf;

12 (3) to cross-examine witnesses who testify  
13 against the potential predator; and

14 (4) to view and copy all petitions and  
15 reports in the court file.

16 D. If the court determines that there is probable  
17 cause that the potential predator is a sexually violent  
18 predator, the court shall direct that the potential predator  
19 be transferred to a county jail or other appropriate secure  
20 facility for an evaluation as to whether the potential  
21 predator is a sexually violent predator. The evaluation shall  
22 be conducted by a person, appointed by the court, deemed to be  
23 professionally qualified to conduct the examination.

24 Section 7. TRIAL--PROCEDURE.--

25 A. Within sixty days after the completion of a

1 hearing held pursuant to Section 6 of the Sexual Predator  
2 Commitment Act, the court shall conduct a trial to determine  
3 whether the person is a sexually violent predator. The trial  
4 may be continued upon the request of either party and a  
5 showing of good cause, or by the court on its own motion in  
6 the due administration of justice, and when the potential  
7 predator will not be substantially prejudiced.

8 B. At all stages of the proceedings under the  
9 Sexual Predator Commitment Act, any person subject to that act  
10 shall be entitled to the assistance of counsel, and if the  
11 person is indigent, the court shall appoint counsel to assist  
12 the person. Whenever any person is subjected to an  
13 examination under the Sexual Predator Commitment Act, the  
14 person may retain experts or professional persons to perform  
15 an examination on the person's behalf. When the person wishes  
16 to be examined by a qualified expert or professional person of  
17 the person's own choice, the examiner may have reasonable  
18 access to the person for the purpose of the examination, as  
19 well as to all relevant medical and psychological records and  
20 reports. In the case of a potential predator who is indigent,  
21 the court, upon the potential predator's request, shall  
22 determine whether the services are necessary and determine  
23 reasonable compensation for the services. If the court  
24 determines that the services are necessary and the expert or  
25 professional person's requested compensation for such services

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1 is reasonable, the court shall assist the potential predator  
2 in obtaining an expert or professional person to perform an  
3 examination or participate in the trial on the potential  
4 predator's behalf. The court shall approve payment for such  
5 services upon the filing of a certified claim for compensation  
6 supported by a written statement specifying the time expended,  
7 services rendered, expenses incurred on behalf of the  
8 potential predator and compensation received in the same case  
9 or for the same services from any other source. The potential  
10 predator, the attorney general or the court may demand that  
11 the trial be before a jury. A demand for a jury trial shall  
12 be filed, in writing, at least four days prior to trial. If  
13 no demand is made, the trial shall be before the court without  
14 a jury. A jury shall consist of twelve jurors unless the  
15 parties agree in writing with the approval of the court that  
16 the jury shall consist of any number of jurors less than  
17 twelve.

18 Section 8. TRIAL-- DETERMINATION-- COMMITMENT PROCEDURE. --

19 A. In a trial conducted pursuant to Section 7 of  
20 the Sexual Predator Commitment Act, the court or jury shall  
21 determine whether, beyond a reasonable doubt, the potential  
22 predator is a sexually violent predator; provided that if the  
23 determination is made by a jury, it shall be by unanimous  
24 verdict. If the court or jury determines that the person is a  
25 sexually violent predator, the person shall be committed to

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1 the custody of the secretary for control, care and treatment  
2 until such time as the committed person's mental abnormality  
3 or personality disorder has so changed that the person is safe  
4 to be at large. The control, care and treatment shall be  
5 provided at a facility operated by the department. At all  
6 times, a committed person committed for control, care and  
7 treatment by the department shall be kept in a secure facility  
8 and shall be segregated at all times from other patients under  
9 the supervision of the secretary. The department may enter  
10 into an agreement with the corrections department for the  
11 confinement of sexually violent predators. Sexually violent  
12 predators who are in the confinement of the corrections  
13 department pursuant to an agreement shall be housed and  
14 managed separately from offenders in the custody of the  
15 corrections department, and except for occasional instances of  
16 supervised incidental contact, shall be segregated from such  
17 offenders.

18 B. If a committed person, while committed to the  
19 custody of the secretary pursuant to the Sexual Predator  
20 Commitment Act, is taken into custody by any law enforcement  
21 officer pursuant to any parole revocation proceeding or any  
22 arrest or conviction for a criminal offense of any nature,  
23 upon the sexually violent predator's release from the custody  
24 of the law enforcement officer, the sexually violent predator  
25 shall be returned to the custody of the secretary for further

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1 treatment pursuant to the Sexual Predator Commitment Act.  
2 During any such period of time a committed person is not in  
3 the actual custody or supervision of the secretary, the  
4 secretary shall be excused from the provisions of Section 9 of  
5 the Sexual Predator Commitment Act, with regard to providing  
6 that committed person an annual examination, annual notice and  
7 annual report to the court, except that the secretary shall  
8 give notice to the court as soon as reasonably possible after  
9 the taking of the committed person into custody that the  
10 committed person is no longer in treatment pursuant to the  
11 Sexual Predator Commitment Act, and notice to the court when  
12 the committed person is returned to the custody of the  
13 secretary for further treatment.

14 C. If the court or jury is not satisfied beyond a  
15 reasonable doubt that the person is a sexually violent  
16 predator, the court shall direct the person's release.

17 D. Upon a mistrial, the court shall direct that  
18 the person be held at a county jail or other appropriate  
19 secure facility until another trial is conducted. Any  
20 subsequent trial following a mistrial shall be held within  
21 ninety days of the previous trial, unless the subsequent trial  
22 is continued as provided in Section 7 of the Sexual Predator  
23 Commitment Act.

24 E. If the potential predator charged with a  
25 sexually violent offense has been found incompetent to stand

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1 trial, and the potential predator's commitment is sought  
2 pursuant to this section, the judge or jury shall first hear  
3 evidence and determine whether the person did commit the act  
4 or acts charged. The hearing on this issue shall comply with  
5 all the procedures specified in Section 7 of the Sexual  
6 Predator Commitment Act and this section. In addition, the  
7 rules of evidence applicable in criminal cases shall apply,  
8 and all constitutional rights available to defendants at  
9 criminal trials, other than the right not to be tried while  
10 incompetent, shall apply. After hearing evidence on the  
11 issue, the judge or jury shall make specific findings on  
12 whether the potential predator did commit the act or acts  
13 charged, the extent to which the person's incompetence or  
14 developmental disability affected the outcome of the hearing,  
15 including its effect on the person's ability to consult with  
16 and assist counsel and to testify on the person's own behalf,  
17 the extent to which the evidence could be reconstructed  
18 without the assistance of the person and the strength of the  
19 prosecution's case. If after the conclusion of the hearing on  
20 this issue, the judge or jury finds, beyond a reasonable  
21 doubt, that the person did commit the act or acts charged, the  
22 court shall enter a final order, appealable by the person on  
23 that issue, and may proceed to consider whether the person  
24 should be committed pursuant to this section.

25 F. Any determination that a person is a sexually

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1 violent predator pursuant to this section may be appealed as  
2 provided for appeals of criminal convictions; provided that  
3 the potential predator shall not be entitled to release  
4 pending the appeal.

5 Section 9. ANNUAL EXAMINATION AND REVIEW. --

6 A. Each person committed under the Sexual Predator  
7 Commitment Act shall have a current examination of the  
8 committed person's mental condition made once every year. The  
9 person may retain, or if the person is indigent and so  
10 requests, the court may appoint a qualified professional to  
11 examine such person, and the professional shall have access to  
12 all records concerning the committed person. The annual  
13 report shall be provided to the court that committed the  
14 person, and the court shall conduct an annual review of the  
15 status of the committed person. Nothing contained in the  
16 Sexual Predator Commitment Act prohibits the committed person  
17 from otherwise petitioning the court for discharge at this  
18 hearing. The secretary shall provide the committed person  
19 with an annual written notice of the committed person's right  
20 to petition the court for release over the secretary's  
21 objection. The notice shall contain a waiver of rights. The  
22 secretary shall forward the notice and waiver form to the  
23 court with the annual report. The committed person shall have  
24 a right to have an attorney represent the person at the  
25 hearing, but the committed person is not entitled to be

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1 present at the hearing.

2 B. If, after reviewing the annual report and, if  
3 the committed person has petitioned the court for release, the  
4 information contained in the petition, the court at the  
5 hearing determines that probable cause exists to believe that  
6 the person's mental abnormality or personality disorder has so  
7 changed that the person is safe to be placed in transitional  
8 release, then the court shall set a hearing on the issue. At  
9 the hearing for transitional release, the committed person  
10 shall be entitled to be present and entitled to the benefit of  
11 all constitutional protections that were afforded the  
12 committed person at the initial commitment trial. The  
13 attorney general shall represent the state and may have the  
14 committed person evaluated by experts chosen by the state.  
15 The committed person may also have experts evaluate the  
16 committed person on the committed person's behalf, and the  
17 court shall appoint an expert if the committed person is  
18 indigent and requests an appointment. Either party may demand  
19 a jury trial. The burden of proof at the hearing shall be  
20 upon the state to prove beyond a reasonable doubt that the  
21 committed person's mental abnormality or personality disorder  
22 remains such that the person is not safe to be placed in  
23 transitional release and if placed in transitional release is  
24 likely to engage in acts of sexual violence.

25 C. If, after the hearing, the court or jury is



1 convinced beyond a reasonable doubt that the person is not  
2 appropriate for transitional release, the court shall order  
3 that the person remain in secure commitment. Otherwise, the  
4 court shall order that the person be placed in transitional  
5 release. If the court determines that the person should be  
6 placed in transitional release, the secretary shall transfer  
7 the person to the transitional release program.

8 Section 10. PETITION FOR TRANSITIONAL RELEASE--  
9 PROCEDURE. --

10 A. If the secretary determines that a committed  
11 person's mental abnormality or personality disorder has so  
12 changed that the person is not likely to commit predatory acts  
13 of sexual violence if placed in transitional release, the  
14 secretary shall authorize the committed person to petition the  
15 court for transitional release. The petition shall be served  
16 upon the court and the attorney general. The court, upon  
17 receipt of the petition for transitional release, shall order  
18 a hearing within thirty days. The attorney general shall  
19 represent the state, and may have the committed person  
20 examined by an expert or professional of the attorney  
21 general's choice. The hearing shall be before a jury if  
22 demanded by either the committed person or the attorney  
23 general. The burden of proof shall be upon the attorney  
24 general to show beyond a reasonable doubt that the committed  
25 person's mental abnormality or personality disorder remains

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1 such that the committed person is not safe to be at large and  
2 that if placed in transitional release is likely to commit  
3 predatory acts of sexual violence.

4 B. If, after the hearing, the court is convinced  
5 beyond a reasonable doubt that the committed person is not  
6 appropriate for transitional release, the court shall order  
7 that the person remain in secure commitment. Otherwise, the  
8 court shall order that the person be placed in transitional  
9 release. If the court determines that the person should be  
10 placed in transitional release, the secretary shall transfer  
11 the person to the transitional release program.

12 Section 11. TRANSITIONAL RELEASE. --

13 A. The secretary may contract for services to be  
14 provided in the transitional release program. During any  
15 period the committed person is in transitional release, the  
16 person shall comply with any rules the secretary may establish  
17 for the program and every directive of the treatment staff of  
18 the transitional release program.

19 B. At any time during which the committed person  
20 is in the transitional release program and the treatment staff  
21 determines that the committed person has violated any rule or  
22 directive associated with the transitional release program,  
23 the treatment staff may remove the person from the  
24 transitional release program and return the person to the  
25 secure commitment facility, or may request the district court

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1 to issue an emergency ex parte order directing any law  
2 enforcement officer to take the person into custody and return  
3 the person to the secure commitment facility. Any such  
4 request may be made verbally or by telephone, but shall be  
5 followed in written or facsimile form delivered to the court  
6 by not later than 5:00 p.m. of the first day the district  
7 court is open for the transaction of business after the verbal  
8 or telephonic request was made.

9 C. Upon the committed person being returned to the  
10 secure commitment facility from the transitional release  
11 program, notice thereof shall be given by the secretary to the  
12 court. The court shall set the matter for a hearing within  
13 two working days of receipt of notice of the person's having  
14 been returned to the secure commitment facility and cause  
15 notice thereof to be given to the attorney general, the  
16 committed person and the secretary. The attorney general  
17 shall have the burden of proof to show probable cause that the  
18 person violated conditions of transitional release. The  
19 hearing shall be heard by the court, without a jury. At the  
20 conclusion of the hearing the court shall issue an order  
21 returning the person to the secure commitment facility or to  
22 the transitional release program, and may order such other  
23 further conditions with which the person must comply if the  
24 person is returned to the transitional release program.

25 Section 12. CONDITIONAL RELEASE. --

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1           A. During any period the committed person is in  
2 transitional release, the person at least annually, and at any  
3 other time deemed appropriate by the treatment staff, shall be  
4 examined by the treatment staff to determine if the person's  
5 mental abnormality or personality disorder has so changed so  
6 as to warrant such person being considered for conditional  
7 release. The treatment staff shall forward a report of its  
8 examination to the court. After reviewing the report, if the  
9 court determines that probable cause exists to believe that  
10 the person's mental abnormality or personality disorder has so  
11 changed that the person is safe to be placed in conditional  
12 release, the court shall then set a hearing on the issue. The  
13 attorney general shall have the burden of proof to show beyond  
14 a reasonable doubt that the person's mental abnormality or  
15 personality disorder remains such that the person is not safe  
16 to be at large and that if placed on conditional release is  
17 likely to engage in repeat acts of sexual violence. The  
18 person shall have the same rights as enumerated in Section 7  
19 of the Sexual Predator Commitment Act. Subsequent to either a  
20 court review or a hearing, the court shall issue an  
21 appropriate order with findings of fact. The order of the  
22 court shall be provided to the attorney general, the person  
23 and the secretary.

24           B. If, after the hearing, the court is convinced  
25 beyond a reasonable doubt that the person is not appropriate

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1 for conditional release, the court shall order that the person  
2 remain either in secure commitment or in transitional release.  
3 Otherwise, the court shall order that the person be placed on  
4 conditional release.

5 Section 13. CONDITIONAL RELEASE--PLAN OF TREATMENT--  
6 HEARING FOR FINAL RELEASE. --

7 A. If, after a hearing conducted pursuant to  
8 Section 12 of the Sexual Predator Commitment Act, the court  
9 determines that the committed person should be placed on  
10 conditional release, the court, based upon the recommendation  
11 of the treatment staff, shall establish a plan of treatment  
12 that the person shall be ordered to follow. The plan of  
13 treatment may include:

14 (1) provisions as to where the committed  
15 person shall reside and with whom; and

16 (2) requirements for taking prescribed  
17 medications, attending individual and group counseling,  
18 maintaining employment, having no contact with children, not  
19 frequenting facilities, locations, events or otherwise in  
20 which children are likely to be present and not engaging in  
21 activities in which contact with children is likely.

22 B. Upon a showing by the committed person that the  
23 person accepts the plan of treatment and is prepared to follow  
24 it, the court shall release the person from the transitional  
25 release program.

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1           C. After a minimum of five years have passed in  
2 which the committed person has been free of violations of  
3 conditions of the person's treatment plan, the treatment staff  
4 or other professionals directed by the court may examine the  
5 person to determine if the person's mental abnormality or  
6 personality disorder has changed so as to warrant being  
7 considered for final discharge. The report shall be forwarded  
8 to the court. After reviewing the report, if the court  
9 determines that probable cause exists to believe that the  
10 person's mental abnormality or personality disorder has so  
11 changed that the person is safe to be entitled to final  
12 discharge, the court shall set a formal hearing on the issue.  
13 The attorney general shall have the burden of proof to show  
14 beyond a reasonable doubt that the person's mental abnormality  
15 or personality disorder remains such that such person is not  
16 appropriate for final discharge. The person shall have the  
17 same rights as enumerated in Section 7 of the Sexual Predator  
18 Commitment Act. Subsequent to either a court review or a  
19 hearing, the court shall issue an appropriate order with  
20 findings of fact. The order of the court shall be provided to  
21 the attorney general, the committed person and the secretary.

22           D. If, after a hearing, the court is convinced  
23 beyond a reasonable doubt that the committed person is not  
24 appropriate for final discharge, the court shall continue  
25 custody of the person with the secretary for placement in a

1 secure commitment facility, transitional release program or  
2 conditional release program. Otherwise, the court shall order  
3 the person finally discharged. In the event the court does  
4 not order final discharge of the person, the committed person  
5 still retains the right to annual reviews.

6 E. At any time during which the committed person  
7 is on conditional release and the professional designated by  
8 the court in the treatment plan to monitor the person's  
9 compliance with the plan determines that the person has  
10 violated any material condition of that plan, the professional  
11 may request the district court to issue an emergency ex parte  
12 order directing any law enforcement officer to take the  
13 committed person into custody and return the person to the  
14 secure commitment facility. Any such request may be made  
15 verbally or by telephone, but shall be followed in written or  
16 facsimile form delivered to the court not later than 5:00 p.m.  
17 of the first day the district court is open for the  
18 transaction of business after the verbal or telephonic request  
19 was made.

20 F. Upon the committed person being returned to the  
21 secure commitment facility from conditional release, notice  
22 thereof shall be given by the secretary to the court. The  
23 court shall set the matter for a hearing within two working  
24 days of receipt of notice of the person's having been returned  
25 to the secure commitment facility and cause notice thereof to

1 be given to the attorney general, the committed person and the  
2 secretary. The attorney general shall have the burden of  
3 proof to show probable cause that the person violated  
4 conditions of conditional release. The hearing shall be to  
5 the court, without a jury. At the conclusion of the hearing  
6 the court shall issue an order returning the person to the  
7 secure commitment facility, to the transitional release  
8 program or to conditional release, and may order such other  
9 further conditions with which the person must comply if the  
10 person is returned to either the transitional release program  
11 or to conditional release.

12 G. The final discharge shall not prevent the  
13 person from being prosecuted for any criminal acts that the  
14 person is alleged to have committed or from being subject in  
15 the future to a subsequent commitment under the Sexual  
16 Predator Commitment Act.

17 Section 14. NOTICE TO VICTIMS OF THE RELEASE OF A  
18 COMMITTED PERSON. --

19 A. In addition to any other information required  
20 to be released under the Sexual Predator Commitment Act, prior  
21 to the release of a person committed under that act, the  
22 secretary shall give written notice of such placement or  
23 release to any victim of the person's activities or crime  
24 whose address is known to the secretary; provided that failure  
25 to notify shall not be a reason for postponement of release.



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1           B. Nothing in this section shall create a cause of  
2 action against the state or an employee of the state acting  
3 within the scope of the employee's employment as a result of  
4 the failure to notify pursuant to this action.

5           Section 15. RIGHT OF COMMITTED PERSON TO PETITION. --

6 Nothing in the Sexual Predator Commitment Act shall prohibit a  
7 committed person from filing a petition for transitional  
8 release, conditional release or final discharge pursuant to  
9 the provisions of that act; provided that, if a person has  
10 previously filed a petition for transitional release,  
11 conditional release or final discharge without the secretary's  
12 approval and the court determined either upon review of the  
13 petition or following a hearing, that the petition was  
14 frivolous or that the committed person's condition had not so  
15 changed that the person was safe to be at large, then the  
16 court shall deny the subsequent petition unless it contains  
17 facts upon which a court could find the condition of the  
18 committed person had so changed that a hearing was warranted.  
19 Upon receipt of a first or subsequent petition from a  
20 committed person without the secretary's approval, the court  
21 shall endeavor whenever possible to review the petition and  
22 determine if the petition is based upon frivolous grounds and  
23 if so shall deny the petition without a hearing.

24           Section 16. CONSTITUTIONAL PROTECTIONS. -- The involuntary  
25 detention or commitment of persons under the Sexual Predator

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1 Commitment Act shall conform to all constitutional  
2 requirements for care and treatment.

3 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--  
4 PROCEDURE. --

5 A. In any criminal case other than those offenses  
6 described in Paragraphs (1) through (9) of Subsection I of  
7 Section 3 of the Sexual Predator Commitment Act, the district  
8 attorney shall file a special allegation of sexual motivation  
9 within ten days after arraignment when sufficient admissible  
10 evidence exists that, when considered with the most plausible,  
11 reasonably foreseeable defense that could be raised under the  
12 evidence, would justify a finding of sexual motivation by a  
13 reasonable and objective fact finder.

14 B. In a criminal case in which there has been a  
15 special allegation of sexual motivation, the state shall prove  
16 beyond a reasonable doubt that the accused committed the crime  
17 with a sexual motivation. The court or jury, if it finds the  
18 defendant guilty, shall also find a special verdict as to  
19 whether the defendant committed the crime with a sexual  
20 motivation.

21 C. The district attorney shall not withdraw the  
22 special allegation of sexual motivation without approval of  
23 the court through an order of dismissal of the special  
24 allegation. The court shall not dismiss this special  
25 allegation unless it finds that such an order is necessary to

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1 correct an error in the initial charging decision or unless  
2 there are evidentiary problems that make proving the special  
3 allegation doubtful.

4 Section 18. CONFIDENTIAL INFORMATION OR RECORDS. -- In  
5 order to protect the public, relevant information and records  
6 that are otherwise confidential or privileged shall be  
7 released to the agency with jurisdiction or the attorney  
8 general for the purpose of meeting the notice requirement  
9 provided in Section 4 of the Sexual Predator Commitment Act  
10 and for determining whether a person is or continues to be a  
11 sexually violent predator.

12 Section 19. COURT RECORDS. -- Any psychological reports,  
13 drug and alcohol reports, treatment records, reports of the  
14 diagnostic center or medical records that have been submitted  
15 to the court or admitted into evidence pursuant to the  
16 provisions of the Sexual Predator Commitment Act shall be part  
17 of the record but shall be sealed and opened only on order of  
18 the court.

19 Section 20. INELIGIBILITY FOR BAIL, BOND, HOUSE ARREST  
20 OR OTHER RELEASE. -- Any person for whom a petition pursuant to  
21 Section 5 of the Sexual Predator Commitment Act has been filed  
22 and is in the secure confinement of the state shall not be  
23 eligible for bail, bond, house arrest or any other measures  
24 releasing the person from the physical protective custody of  
25 the state.

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Section 21. COSTS--RESPONSIBILITY OF SECRETARY. --The secretary is responsible for all costs relating to the evaluation and treatment of persons committed to the secretary's custody under any provision of the Sexual Predator Commitment Act. Reimbursement may be obtained by the secretary for the cost of care and treatment, including placement in transitional release, of persons committed to the secretary's custody who are not indigent by assessing a fee pursuant to Section 43-1-25 NMSA 1978.

Section 22. SEVERABILITY. --If any part or application of the Sexual Predator Commitment Act is held invalid, the remainder or its application to other situations or persons shall not be affected.