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SENATE BILL 123

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

INTRODUCED BY

Rod Adair

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

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

7 Section 3. DEFINITIONS.--As used in the Sexual Predator  
8 Commitment Act:

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

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

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

20 D. "likely to engage in repeat acts of sexual  
21 violence" means the person's propensity to commit sexually  
22 violent offenses is of such a degree as to pose a menace to  
23 the health and safety of others;

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

F. "potential predator" means a person who is a

1 potential or actual subject of proceedings pursuant to the  
2 Sexual Predator Commitment Act;

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

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

7 I. "sexually violent offense" means:

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

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

12 (3) criminal sexual contact in the fourth  
13 degree, as described in Subsection C of Section 30-9-12 NMSA  
14 1978;

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

17 (5) incest, as described in Section 30-10-3  
18 NMSA 1978;

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

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

23 (8) an attempt as described in Section  
24 30-28-1 NMSA 1978, conspiracy as described in Section 30-28-2  
25 NMSA 1978 or criminal solicitation as described in Section  
30-28-3 NMSA 1978 of an offense described in Paragraphs (1)  
through (7) of this subsection;

(9) any conviction for a felony offense in  
effect at any time prior to the effective date of the Sexual

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1 Predator Commitment Act that is comparable to an offense  
2 described in Paragraphs (1) through (8) of this subsection or  
3 any federal or other state conviction for a felony offense  
4 that, if committed in this state, would be a sexually violent  
5 offense pursuant to Paragraphs (1) through (8) of this  
6 subsection; or

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

13 J. "sexually violent predator" means a person who  
14 has been convicted of or charged with a sexually violent  
15 offense and who suffers from a mental abnormality or  
16 personality disorder that makes the person likely to engage in  
17 repeat acts of sexual violence;

18 K. "transitional release" means any halfway house,  
19 work release or other placement designed to assist the  
20 person's adjustment and reintegration into the community once  
21 released from commitment; and

22 L. "treatment staff" means the persons, agencies  
23 or firms employed by or contracted with the secretary to  
24 provide treatment, supervision or other services for committed  
25 persons.

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

A. When it appears to an agency with jurisdiction  
that a person may be a sexually violent predator, the agency

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1 shall give written notice to the attorney general and the  
2 multi-disciplinary team established in Subsection D of this  
3 section. The notice shall be given no less than ninety days  
4 prior to:

5 (1) the anticipated release from total  
6 confinement of a person who has been convicted of a sexually  
7 violent offense, except that in the case of persons who are  
8 returned to confinement for no more than ninety days as a  
9 result of revocation of parole or other post-release  
10 supervision, written notice shall be given as soon as  
11 practicable following the person's readmission to confinement;

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

15 (3) the release of a person who has been  
16 found not guilty by reason of insanity of a sexually violent  
17 offense.

18 B. The agency with jurisdiction shall inform the  
19 attorney general and the multi-disciplinary team of the  
20 following:

21 (1) the potential predator's name,  
22 identifying factors, anticipated future residence and offense  
23 history; and

24 (2) documentation of institutional adjustment  
25 and any treatment received.

C. The secretary of corrections shall establish a  
multi-disciplinary team, which may include individuals from  
other state agencies, to review available records of each  
person referred to the team pursuant to Subsection A of this

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1 section. The team, within thirty days of receiving notice,  
2 shall assess whether the potential predator is a sexually  
3 violent predator. The team shall notify the attorney general  
4 of its assessment.

5 D. The attorney general shall appoint a  
6 prosecutor's review committee to review the records of each  
7 person referred to the attorney general pursuant to Subsection  
8 A of this section. The prosecutor's review committee shall  
9 assist the attorney general in the determination of whether  
10 the person is a sexually violent predator. The assessment of  
11 the multi-disciplinary team shall be made available to the  
12 attorney general and the prosecutor's review committee.

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

19 F. The provisions of this section are not  
20 jurisdictional, and failure to comply with its provisions does  
21 not prevent the attorney general from proceeding against a  
22 person otherwise subject to commitment pursuant to the Sexual  
23 Predator Commitment Act.

24 Section 5. PETITION FOR COMMITMENT.--

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

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

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

11 Section 6. DETERMINATION OF PROBABLE CAUSE.--

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

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

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

and

(2) determine whether probable cause exists  
to believe that the potential predator is a sexually violent  
predator. The state may rely upon the petition or supplement

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1 the petition with additional documentary evidence or live  
2 testimony.

3 C. At the probable cause hearing, the potential  
4 predator has the following rights in addition to the rights  
5 previously specified:

6 (1) to be represented by counsel;

7 (2) to present evidence on the potential  
8 predator's behalf;

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

11 (4) to view and copy all petitions and  
12 reports in the court file.

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

21 Section 7. TRIAL--PROCEDURE.--

22 A. Within sixty days after the completion of a  
23 hearing held pursuant to Section 6 of the Sexual Predator  
24 Commitment Act, the court shall conduct a trial to determine  
25 whether the person is a sexually violent predator. The trial  
may be continued upon the request of either party and a  
showing of good cause, or by the court on its own motion in  
the due administration of justice, and when the potential  
predator will not be substantially prejudiced.

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1           B. At all stages of the proceedings under the  
2 Sexual Predator Commitment Act, any person subject to that act  
3 shall be entitled to the assistance of counsel, and if the  
4 person is indigent, the court shall appoint counsel to assist  
5 the person. Whenever any person is subjected to an  
6 examination under the Sexual Predator Commitment Act, the  
7 person may retain experts or professional persons to perform  
8 an examination on the person's behalf. When the person wishes  
9 to be examined by a qualified expert or professional person of  
10 the person's own choice, the examiner may have reasonable  
11 access to the person for the purpose of the examination, as  
12 well as to all relevant medical and psychological records and  
13 reports. In the case of a potential predator who is indigent,  
14 the court, upon the potential predator's request, shall  
15 determine whether the services are necessary and determine  
16 reasonable compensation for the services. If the court  
17 determines that the services are necessary and the expert or  
18 professional person's requested compensation for such services  
19 is reasonable, the court shall assist the potential predator  
20 in obtaining an expert or professional person to perform an  
21 examination or participate in the trial on the potential  
22 predator's behalf. The court shall approve payment for such  
23 services upon the filing of a certified claim for compensation  
24 supported by a written statement specifying the time expended,  
25 services rendered, expenses incurred on behalf of the  
potential predator and compensation received in the same case  
or for the same services from any other source. The potential  
predator, the attorney general or the court may demand that  
the trial be before a jury. A demand for a jury trial shall

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1 be filed, in writing, at least four days prior to trial. If  
2 no demand is made, the trial shall be before the court without  
3 a jury. A jury shall consist of twelve jurors unless the  
4 parties agree in writing with the approval of the court that  
5 the jury shall consist of any number of jurors less than  
6 twelve.

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

8 A. In a trial conducted pursuant to Section 7 of  
9 the Sexual Predator Commitment Act, the court or jury shall  
10 determine whether, beyond a reasonable doubt, the potential  
11 predator is a sexually violent predator; provided that if the  
12 determination is made by a jury, it shall be by unanimous  
13 verdict. If the court or jury determines that the person is a  
14 sexually violent predator, the person shall be committed to  
15 the custody of the secretary for control, care and treatment  
16 until such time as the committed person's mental abnormality  
17 or personality disorder has so changed that the person is safe  
18 to be at large. The control, care and treatment shall be  
19 provided at a facility operated by the department. At all  
20 times, a committed person committed for control, care and  
21 treatment by the department shall be kept in a secure facility  
22 and shall be segregated at all times from other patients under  
23 the supervision of the secretary. The department may enter  
24 into an agreement with the corrections department for the  
25 confinement of sexually violent predators. Sexually violent  
predators who are in the confinement of the corrections  
department pursuant to an agreement shall be housed and  
managed separately from offenders in the custody of the  
corrections department, and except for occasional instances of

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1 supervised incidental contact, shall be segregated from such  
2 offenders.

3 B. If a committed person, while committed to the  
4 custody of the secretary pursuant to the Sexual Predator  
5 Commitment Act, is taken into custody by any law enforcement  
6 officer pursuant to any parole revocation proceeding or any  
7 arrest or conviction for a criminal offense of any nature,  
8 upon the sexually violent predator's release from the custody  
9 of the law enforcement officer, the sexually violent predator  
10 shall be returned to the custody of the secretary for further  
11 treatment pursuant to the Sexual Predator Commitment Act.  
12 During any such period of time a committed person is not in  
13 the actual custody or supervision of the secretary, the  
14 secretary shall be excused from the provisions of Section 9 of  
15 the Sexual Predator Commitment Act, with regard to providing  
16 that committed person an annual examination, annual notice and  
17 annual report to the court, except that the secretary shall  
18 give notice to the court as soon as reasonably possible after  
19 the taking of the committed person into custody that the  
20 committed person is no longer in treatment pursuant to the  
21 Sexual Predator Commitment Act, and notice to the court when  
22 the committed person is returned to the custody of the  
23 secretary for further treatment.

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

D. Upon a mistrial, the court shall direct that  
the person be held at a county jail or other appropriate  
secure facility until another trial is conducted. Any

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1 subsequent trial following a mistrial shall be held within  
2 ninety days of the previous trial, unless the subsequent trial  
3 is continued as provided in Section 7 of the Sexual Predator  
4 Commitment Act.

5 E. If the potential predator charged with a  
6 sexually violent offense has been found incompetent to stand  
7 trial, and the potential predator's commitment is sought  
8 pursuant to this section, the judge or jury shall first hear  
9 evidence and determine whether the person did commit the act  
10 or acts charged. The hearing on this issue shall comply with  
11 all the procedures specified in Section 7 of the Sexual  
12 Predator Commitment Act and this section. In addition, the  
13 rules of evidence applicable in criminal cases shall apply,  
14 and all constitutional rights available to defendants at  
15 criminal trials, other than the right not to be tried while  
16 incompetent, shall apply. After hearing evidence on the  
17 issue, the judge or jury shall make specific findings on  
18 whether the potential predator did commit the act or acts  
19 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  
22 and assist counsel and to testify on the person's own behalf,  
23 the extent to which the evidence could be reconstructed  
24 without the assistance of the person and the strength of the  
25 prosecution's case. If after the conclusion of the hearing on  
this issue, the judge or jury 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

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1 should be committed pursuant to this section.

2 F. Any determination that a person is a sexually  
3 violent predator pursuant to this section may be appealed as  
4 provided for appeals of criminal convictions; provided that  
5 the potential predator shall not be entitled to release  
6 pending the appeal.

7 Section 9. ANNUAL EXAMINATION AND REVIEW.--

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

B. If, after reviewing the annual report and, if

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

22 C. If, after the hearing, the court or jury is  
23 convinced beyond a reasonable doubt that the person is not  
24 appropriate for transitional release, the court shall order  
25 that the person remain in secure commitment. Otherwise, the  
court shall order that the person be placed in transitional  
release. If the court determines that the person should be  
placed in transitional release, the secretary shall transfer

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1 the person to the transitional release program.

2 Section 10. PETITION FOR TRANSITIONAL RELEASE--  
3 PROCEDURE.--

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

23 B. If, after the hearing, the court is convinced  
24 beyond a reasonable doubt that the committed person is not  
25 appropriate for transitional release, the court shall order  
that the person remain in secure commitment. Otherwise, the  
court shall order that the person be placed in transitional  
release. If the court determines that the person should be  
placed in transitional release, the secretary shall transfer

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1 the person to the transitional release program.

2 Section 11. TRANSITIONAL RELEASE.--

3 A. The secretary may contract for services to be  
4 provided in the transitional release program. During any  
5 period the committed person is in transitional release, the  
6 person shall comply with any rules the secretary may establish  
7 for the program and every directive of the treatment staff of  
8 the transitional release program.

9 B. At any time during which the committed person  
10 is in the transitional release program and the treatment staff  
11 determines that the committed person has violated any rule or  
12 directive associated with the transitional release program,  
13 the treatment staff may remove the person from the  
14 transitional release program and return the person to the  
15 secure commitment facility, or may request the district court  
16 to issue an emergency ex parte order directing any law  
17 enforcement officer to take the person into custody and return  
18 the person to the secure commitment facility. Any such  
19 request may be made verbally or by telephone, but shall be  
20 followed in written or facsimile form delivered to the court  
21 by not later than 5:00 p.m. of the first day the district  
22 court is open for the transaction of business after the verbal  
23 or telephonic request was made.

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

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

11 Section 12. CONDITIONAL RELEASE.--

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

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1 of the Sexual Predator Commitment Act. Subsequent to either a  
2 court review or a hearing, the court shall issue an  
3 appropriate order with findings of fact. The order of the  
4 court shall be provided to the attorney general, the person  
5 and the secretary.

6 B. If, after the hearing, the court is convinced  
7 beyond a reasonable doubt that the person is not appropriate  
8 for conditional release, the court shall order that the person  
9 remain either in secure commitment or in transitional release.  
10 Otherwise, the court shall order that the person be placed on  
11 conditional release.

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

14 A. If, after a hearing conducted pursuant to  
15 Section 12 of the Sexual Predator Commitment Act, the court  
16 determines that the committed person should be placed on  
17 conditional release, the court, based upon the recommendation  
18 of the treatment staff, shall establish a plan of treatment  
19 that the person shall be ordered to follow. The plan of  
20 treatment may include:

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

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

B. Upon a showing by the committed person that the

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1 person accepts the plan of treatment and is prepared to follow  
2 it, the court shall release the person from the transitional  
3 release program.

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

25 D. If, after a hearing, the court is convinced  
beyond a reasonable doubt that the committed person is not  
appropriate for final discharge, the court shall continue  
custody of the person with the secretary for placement in a  
secure commitment facility, transitional release program or

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

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

19 F. Upon the committed person being returned to the  
20 secure commitment facility from conditional release, notice  
21 thereof shall be given by the secretary to the court. The  
22 court shall set the matter for a hearing within two working  
23 days of receipt of notice of the person's having been returned  
24 to the secure commitment facility and cause notice thereof to  
25 be given to the attorney general, the committed person and the  
secretary. The attorney general shall have the burden of  
proof to show probable cause that the person violated  
conditions of conditional release. The hearing shall be to  
the court, without a jury. At the conclusion of the hearing

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1 the court shall issue an order returning the person to the  
2 secure commitment facility, to the transitional release  
3 program or to conditional release, and may order such other  
4 further conditions with which the person must comply if the  
5 person is returned to either the transitional release program  
6 or to conditional release.

7 G. The final discharge shall not prevent the  
8 person from being prosecuted for any criminal acts that the  
9 person is alleged to have committed or from being subject in  
10 the future to a subsequent commitment under the Sexual  
11 Predator Commitment Act.

12 Section 14. NOTICE TO VICTIMS OF THE RELEASE OF A  
13 COMMITTED PERSON.--

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

21 B. Nothing in this section shall create a cause of  
22 action against the state or an employee of the state acting  
23 within the scope of the employee's employment as a result of  
24 the failure to notify pursuant to this action.

25 Section 15. RIGHT OF COMMITTED PERSON TO PETITION.--  
Nothing in the Sexual Predator Commitment Act shall prohibit a  
committed person from filing a petition for transitional  
release, conditional release or final discharge pursuant to  
the provisions of that act; provided that, if a person has

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1 previously filed a petition for transitional release,  
2 conditional release or final discharge without the secretary's  
3 approval and the court determined either upon review of the  
4 petition or following a hearing, that the petition was  
5 frivolous or that the committed person's condition had not so  
6 changed that the person was safe to be at large, then the  
7 court shall deny the subsequent petition unless it contains  
8 facts upon which a court could find the condition of the  
9 committed person had so changed that a hearing was warranted.  
10 Upon receipt of a first or subsequent petition from a  
11 committed person without the secretary's approval, the court  
12 shall endeavor whenever possible to review the petition and  
13 determine if the petition is based upon frivolous grounds and  
14 if so shall deny the petition without a hearing.

15 Section 16. CONSTITUTIONAL PROTECTIONS.--The involuntary  
16 detention or commitment of persons under the Sexual Predator  
17 Commitment Act shall conform to all constitutional  
18 requirements for care and treatment.

19 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--  
20 PROCEDURE.--

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

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1           B. In a criminal case in which there has been a  
2 special allegation of sexual motivation, the state shall prove  
3 beyond a reasonable doubt that the accused committed the crime  
4 with a sexual motivation. The court or jury, if it finds the  
5 defendant guilty, shall also find a special verdict as to  
6 whether the defendant committed the crime with a sexual  
7 motivation.

8           C. The district attorney shall not withdraw the  
9 special allegation of sexual motivation without approval of  
10 the court through an order of dismissal of the special  
11 allegation. The court shall not dismiss this special  
12 allegation unless it finds that such an order is necessary to  
13 correct an error in the initial charging decision or unless  
14 there are evidentiary problems that make proving the special  
15 allegation doubtful.

16           Section 18. CONFIDENTIAL INFORMATION OR RECORDS.--In  
17 order to protect the public, relevant information and records  
18 that are otherwise confidential or privileged shall be  
19 released to the agency with jurisdiction or the attorney  
20 general for the purpose of meeting the notice requirement  
21 provided in Section 4 of the Sexual Predator Commitment Act  
22 and for determining whether a person is or continues to be a  
23 sexually violent predator.

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

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the court.

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

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.