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SENATE BILL 88

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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

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1 predators and the risks they present to society, a separate  
2 involuntary civil commitment process for the potentially long-  
3 term control, care and treatment of sexually violent predators  
4 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 that  
14 releases upon lawful order or authority a person serving a  
15 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 the  
2 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 described  
3 in Section 30-9-14.3 NMSA 1978;

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

6 (8) an attempt as described in Section 30-28-1  
7 NMSA 1978, conspiracy as described in Section 30-28-2 NMSA 1978  
8 or criminal solicitation as described in Section 30-28-3 NMSA  
9 1978 of an offense described in Paragraphs (1) through (7) of  
10 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 person's  
7 adjustment and reintegration into the community once released  
8 from commitment; and

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

12 Section 4. NOTICE OF RELEASE OF POTENTIAL PREDATOR--  
13 EVALUATION BY MULTIDISCIPLINARY TEAM AND ATTORNEY GENERAL. --

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

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

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1 practicable following the person's readmission to confinement;

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

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

7 B. The agency with jurisdiction shall inform the  
8 attorney general and the multidisciplinary team of the  
9 following:

10 (1) the potential predator's name, identifying  
11 factors, anticipated future residence and offense history; and

12 (2) documentation of institutional adjustment  
13 and any treatment received.

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

22 D. The attorney general shall appoint a  
23 prosecutor's review committee to review the records of each  
24 person referred to the attorney general pursuant to Subsection  
25 A of this section. The prosecutor's review committee shall

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1 assist the attorney general in the determination of whether the  
2 person is a sexually violent predator. The assessment of the  
3 multidisciplinary team shall be made available to the attorney  
4 general and the prosecutor's review committee.

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

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

16 Section 5. PETITION FOR COMMITMENT. --

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

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1 sufficient facts to support the allegation.

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

7 Section 6. DETERMINATION OF PROBABLE CAUSE. --

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

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

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

21 and

22 (2) determine whether probable cause exists to  
23 believe that the potential predator is a sexually violent  
24 predator. The state may rely upon the petition or supplement  
25 the petition with additional documentary evidence or live



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1 testimony.

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

- 5 (1) to be represented by counsel;
- 6 (2) to present evidence on the potential  
7 predator's behalf;
- 8 (3) to cross-examine witnesses who testify  
9 against the potential predator; and
- 10 (4) to view and copy all petitions and reports  
11 in the court file.

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

20 Section 7. TRIAL--PROCEDURE.--

21 A. Within sixty days after the completion of a  
22 hearing held pursuant to Section 6 of the Sexual Predator  
23 Commitment Act, the court shall conduct a trial to determine  
24 whether the person is a sexually violent predator. The trial  
25 may be continued upon the request of either party and a showing

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1 of good cause, or by the court on its own motion in the due  
2 administration of justice, and when the potential predator will  
3 not be substantially prejudiced.

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

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1 certified claim for compensation supported by a written  
2 statement specifying the time expended, services rendered,  
3 expenses incurred on behalf of the potential predator and  
4 compensation received in the same case or for the same services  
5 from any other source. The potential predator, the attorney  
6 general or the court may demand that the trial be before a  
7 jury. A demand for a jury trial shall be filed, in writing, at  
8 least four days prior to trial. If no demand is made, the  
9 trial shall be before the court without a jury. A jury shall  
10 consist of twelve jurors unless the parties agree in writing  
11 with the approval of the court that the jury shall consist of  
12 any number of jurors less than twelve.

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

14 A. In a trial conducted pursuant to Section 7 of  
15 the Sexual Predator Commitment Act, the court or jury shall  
16 determine whether, beyond a reasonable doubt, the potential  
17 predator is a sexually violent predator; provided that if the  
18 determination is made by a jury, it shall be by unanimous  
19 verdict. If the court or jury determines that the person is a  
20 sexually violent predator, the person shall be committed to the  
21 custody of the secretary for control, care and treatment until  
22 such time as the committed person's mental abnormality or  
23 personality disorder has so changed that the person is safe to  
24 be at large. The control, care and treatment shall be provided  
25 at a facility operated by the department. At all times, a

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1 committed person committed for control, care and treatment by  
2 the department shall be kept in a secure facility and shall be  
3 segregated at all times from other patients under the  
4 supervision of the secretary. The department may enter into an  
5 agreement with the corrections department for the confinement  
6 of sexually violent predators. Sexually violent predators who  
7 are in the confinement of the corrections department pursuant  
8 to an agreement shall be housed and managed separately from  
9 offenders in the custody of the corrections department, and  
10 except for occasional instances of supervised incidental  
11 contact, shall be segregated from such offenders.

12 B. If a committed person, while committed to the  
13 custody of the secretary pursuant to the Sexual Predator  
14 Commitment Act, is taken into custody by any law enforcement  
15 officer pursuant to any parole revocation proceeding or any  
16 arrest or conviction for a criminal offense of any nature, upon  
17 the sexually violent predator's release from the custody of the  
18 law enforcement officer, the sexually violent predator shall be  
19 returned to the custody of the secretary for further treatment  
20 pursuant to the Sexual Predator Commitment Act. During any  
21 such period of time a committed person is not in the actual  
22 custody or supervision of the secretary, the secretary shall be  
23 excused from the provisions of Section 9 of the Sexual Predator  
24 Commitment Act, with regard to providing that committed person  
25 an annual examination, annual notice and annual report to the

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1 court, except that the secretary shall give notice to the court  
2 as soon as reasonably possible after the taking of the  
3 committed person into custody that the committed person is no  
4 longer in treatment pursuant to the Sexual Predator Commitment  
5 Act, and notice to the court when the committed person is  
6 returned to the custody of the secretary for further treatment.

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

10 D. Upon a mistrial, the court shall direct that the  
11 person be held at a county jail or other appropriate secure  
12 facility until another trial is conducted. Any subsequent  
13 trial following a mistrial shall be held within ninety days of  
14 the previous trial, unless the subsequent trial is continued as  
15 provided in Section 7 of the Sexual Predator Commitment Act.

16 E. If the potential predator charged with a  
17 sexually violent offense has been found incompetent to stand  
18 trial, and the potential predator's commitment is sought  
19 pursuant to this section, the judge or jury shall first hear  
20 evidence and determine whether the person did commit the act or  
21 acts charged. The hearing on this issue shall comply with all  
22 the procedures specified in Section 7 of the Sexual Predator  
23 Commitment Act and this section. In addition, the rules of  
24 evidence applicable in criminal cases shall apply, and all  
25 constitutional rights available to defendants at criminal

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1 trials, other than the right not to be tried while incompetent,  
2 shall apply. After hearing evidence on the issue, the judge or  
3 jury shall make specific findings on whether the potential  
4 predator did commit the act or acts charged, the extent to  
5 which the person's incompetence or developmental disability  
6 affected the outcome of the hearing, including its effect on  
7 the person's ability to consult with and assist counsel and to  
8 testify on the person's own behalf, the extent to which the  
9 evidence could be reconstructed without the assistance of the  
10 person and the strength of the prosecution's case. If after  
11 the conclusion of the hearing on this issue, the judge or jury  
12 finds, beyond a reasonable doubt, that the person did commit  
13 the act or acts charged, the court shall enter a final order,  
14 appealable by the person on that issue, and may proceed to  
15 consider whether the person should be committed pursuant to  
16 this section.

17 F. Any determination that a person is a sexually  
18 violent predator pursuant to this section may be appealed as  
19 provided for appeals of criminal convictions; provided that the  
20 potential predator shall not be entitled to release pending the  
21 appeal.

22 Section 9. ANNUAL EXAMINATION AND REVIEW. --

23 A. Each person committed under the Sexual Predator  
24 Commitment Act shall have a current examination of the  
25 committed person's mental condition made once every year. The

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1 person may retain, or if the person is indigent and so  
2 requests, the court may appoint a qualified professional to  
3 examine such person, and the professional shall have access to  
4 all records concerning the committed person. The annual report  
5 shall be provided to the court that committed the person, and  
6 the court shall conduct an annual review of the status of the  
7 committed person. Nothing contained in the Sexual Predator  
8 Commitment Act prohibits the committed person from otherwise  
9 petitioning the court for discharge at this hearing. The  
10 secretary shall provide the committed person with an annual  
11 written notice of the committed person's right to petition the  
12 court for release over the secretary's objection. The notice  
13 shall contain a waiver of rights. The secretary shall forward  
14 the notice and waiver form to the court with the annual report.  
15 The committed person shall have a right to have an attorney  
16 represent the person at the hearing, but the committed person  
17 is not entitled to be present at the hearing.

18 B. If, after reviewing the annual report and, if  
19 the committed person has petitioned the court for release, the  
20 information contained in the petition, the court at the hearing  
21 determines that probable cause exists to believe that the  
22 person's mental abnormality or personality disorder has so  
23 changed that the person is safe to be placed in transitional  
24 release, then the court shall set a hearing on the issue. At  
25 the hearing for transitional release, the committed person

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

16 C. If, after the hearing, the court or jury is  
17 convinced beyond a reasonable doubt that the person is not  
18 appropriate for transitional release, the court shall order  
19 that the person remain in secure commitment. Otherwise, the  
20 court shall order that the person be placed in transitional  
21 release. If the court determines that the person should be  
22 placed in transitional release, the secretary shall transfer  
23 the person to the transitional release program.

24 Section 10. PETITION FOR TRANSITIONAL RELEASE--  
25 PROCEDURE. --

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

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

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

24 C. Upon the committed person being returned to the  
25 secure commitment facility from the transitional release

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

15 Section 12. CONDITIONAL RELEASE. --

16 A. During any period the committed person is in  
17 transitional release, the person at least annually, and at any  
18 other time deemed appropriate by the treatment staff, shall be  
19 examined by the treatment staff to determine if the person's  
20 mental abnormality or personality disorder has so changed so as  
21 to warrant such person being considered for conditional  
22 release. The treatment staff shall forward a report of its  
23 examination to the court. After reviewing the report, if the  
24 court determines that probable cause exists to believe that the  
25 person's mental abnormality or personality disorder has so

1 changed that the person is safe to be placed in conditional  
2 release, the court shall then set a hearing on the issue. The  
3 attorney general shall have the burden of proof to show beyond  
4 a reasonable doubt that the person's mental abnormality or  
5 personality disorder remains such that the person is not safe  
6 to be at large and that if placed on conditional release is  
7 likely to engage in repeat acts of sexual violence. The person  
8 shall have the same rights as enumerated in Section 7 of the  
9 Sexual Predator Commitment Act. Subsequent to either a court  
10 review or a hearing, the court shall issue an appropriate order  
11 with findings of fact. The order of the court shall be  
12 provided to the attorney general, the person and the secretary.

13 B. If, after the hearing, the court is convinced  
14 beyond a reasonable doubt that the person is not appropriate  
15 for conditional release, the court shall order that the person  
16 remain either in secure commitment or in transitional release.  
17 Otherwise, the court shall order that the person be placed on  
18 conditional release.

19 Section 13. ~~CONDITIONAL RELEASE--PLAN OF TREATMENT--~~  
20 ~~HEARING FOR FINAL RELEASE. --~~

21 A. If, after a hearing conducted pursuant to  
22 Section 12 of the Sexual Predator Commitment Act, the court  
23 determines that the committed person should be placed on  
24 conditional release, the court, based upon the recommendation  
25 of the treatment staff, shall establish a plan of treatment

1 that the person shall be ordered to follow. The plan of  
2 treatment may include:

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

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

11 B. Upon a showing by the committed person that the  
12 person accepts the plan of treatment and is prepared to follow  
13 it, the court shall release the person from the transitional  
14 release program.

15 C. After a minimum of five years have passed in  
16 which the committed person has been free of violations of  
17 conditions of the person's treatment plan, the treatment staff  
18 or other professionals directed by the court may examine the  
19 person to determine if the person's mental abnormality or  
20 personality disorder has changed so as to warrant being  
21 considered for final discharge. The report shall be forwarded  
22 to the court. After reviewing the report, if the court  
23 determines that probable cause exists to believe that the  
24 person's mental abnormality or personality disorder has so  
25 changed that the person is safe to be entitled to final

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1 discharge, the court shall set a formal hearing on the issue.  
2 The attorney general shall have the burden of proof to show  
3 beyond a reasonable doubt that the person's mental abnormality  
4 or personality disorder remains such that such person is not  
5 appropriate for final discharge. The person shall have the  
6 same rights as enumerated in Section 7 of the Sexual Predator  
7 Commitment Act. Subsequent to either a court review or a  
8 hearing, the court shall issue an appropriate order with  
9 findings of fact. The order of the court shall be provided to  
10 the attorney general, the committed person and the secretary.

11 D. If, after a hearing, the court is convinced  
12 beyond a reasonable doubt that the committed person is not  
13 appropriate for final discharge, the court shall continue  
14 custody of the person with the secretary for placement in a  
15 secure commitment facility, transitional release program or  
16 conditional release program. Otherwise, the court shall order  
17 the person finally discharged. In the event the court does not  
18 order final discharge of the person, the committed person still  
19 retains the right to annual reviews.

20 E. At any time during which the committed person is  
21 on conditional release and the professional designated by the  
22 court in the treatment plan to monitor the person's compliance  
23 with the plan determines that the person has violated any  
24 material condition of that plan, the professional may request  
25 the district court to issue an emergency ex parte order

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

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

25 G. The final discharge shall not prevent the person

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1 from being prosecuted for any criminal acts that the person is  
2 alleged to have committed or from being subject in the future  
3 to a subsequent commitment under the Sexual Predator Commitment  
4 Act.

5 Section 14. NOTICE TO VICTIMS OF THE RELEASE OF A  
6 COMMITTED PERSON. --

7 A. In addition to any other information required to  
8 be released under the Sexual Predator Commitment Act, prior to  
9 the release of a person committed under that act, the secretary  
10 shall give written notice of such placement or release to any  
11 victim of the person's activities or crime whose address is  
12 known to the secretary; provided that failure to notify shall  
13 not be a reason for postponement of release.

14 B. Nothing in this section shall create a cause of  
15 action against the state or an employee of the state acting  
16 within the scope of the employee's employment as a result of  
17 the failure to notify pursuant to this action.

18 Section 15. RIGHT OF COMMITTED PERSON TO PETITION. --  
19 Nothing in the Sexual Predator Commitment Act shall prohibit a  
20 committed person from filing a petition for transitional  
21 release, conditional release or final discharge pursuant to the  
22 provisions of that act; provided that, if a person has  
23 previously filed a petition for transitional release,  
24 conditional release or final discharge without the secretary's  
25 approval and the court determined either upon review of the



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

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

16 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--  
17 PROCEDURE. --

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

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1 reasonable and objective fact finder.

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

9 C. The district attorney shall not withdraw the  
10 special allegation of sexual motivation without approval of the  
11 court through an order of dismissal of the special allegation.  
12 The court shall not dismiss this special allegation unless it  
13 finds that such an order is necessary to correct an error in  
14 the initial charging decision or unless there are evidentiary  
15 problems that make proving the special 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 released  
19 to the agency with jurisdiction or the attorney general for the  
20 purpose of meeting the notice requirement provided in Section 4  
21 of the Sexual Predator Commitment Act and for determining  
22 whether a person is or continues to be a sexually violent  
23 predator.

24 Section 19. COURT RECORDS. -- Any psychological reports,  
25 drug and alcohol reports, treatment records, reports of the

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1 diagnostic center or medical records that have been submitted  
2 to the court or admitted into evidence pursuant to the  
3 provisions of the Sexual Predator Commitment Act shall be part  
4 of the record but shall be sealed and opened only on order of  
5 the court.

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

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

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