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SENATE BILL 105

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO SEXUAL OFFENDERS; PROVIDING FOR THE INVOLUNTARY
CIVIL COMMITMENT OF SEXUAL PREDATORS; ENACTING THE SEXUAL
PREDATOR CIVIL COMMITMENT ACT; MAKING APPROPRIATIONS.

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 Civil 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

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

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

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

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

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

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

25 D. "likely to engage in repeat acts of sexual

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1 violence" means that the person's propensity to commit sexually
2 violent offenses is of such a degree as to pose a menace to the
3 health and safety of others and that the person has serious
4 difficulty in controlling his behavior;

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

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

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

14 H. "sexual motivation" means that one of the
15 purposes for which a defendant committed a crime was for the
16 purpose of the defendant's sexual gratification;

17 I. "sexually violent offense" means:

18 (1) criminal sexual penetration of a child
19 under thirteen years of age, as provided in Section 30-9-11
20 NMSA 1978;

21 (2) sexual exploitation of children, as
22 provided in Section 30-6A-3 NMSA 1978;

23 (3) sexual exploitation of children by
24 prostitution, as provided in Section 30-6A-4 NMSA 1978;

25 (4) criminal sexual contact of a minor, as

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1 provided in Section 30-9-13 NMSA 1978;

2 (5) incest, as provided in Section 30-10-3
3 NMSA 1978;

4 (6) child luring, as provided in Section
5 30-37-3.2 NMSA 1978;

6 (7) an attempt to commit any of the offenses
7 set forth in Paragraphs (1) through (5) of this subsection, as
8 provided in Section 30-28-1 NMSA 1978;

9 (8) any conviction for a felony offense in
10 effect at any time prior to the effective date of the Sexual
11 Predator Civil Commitment Act that is comparable to an offense
12 described in Paragraphs (1) through (7) of this subsection or
13 any federal or other state conviction for a felony offense
14 that, if committed in this state, would be a sexually violent
15 offense pursuant to Paragraphs (1) through (7) of this
16 subsection; or

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

24 J. "sexually violent predator" means a person who
25 has been convicted of a sexually violent offense and who

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1 suffers from a mental abnormality or personality disorder that
2 makes the person likely to engage in repeat acts of sexual
3 violence and who has serious difficulty in controlling his
4 behavior;

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 potential predator, the agency shall
16 give written notice to the attorney general and the
17 multidisciplinary team established in Subsection C 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 potential predator who has been convicted of a
22 sexually violent offense, except that in the case of a
23 potential predator who is returned to confinement for no more
24 than ninety days as a result of revocation of parole or other
25 post-release supervision, written notice shall be given as soon

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1 as practicable following the potential predator's readmission
2 to confinement;

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

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

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

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

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

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

24 D. The attorney general shall appoint a
25 prosecutor's review committee to review the records of each

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

8 E. The agency with jurisdiction and its employees
9 and officials, members of the multidisciplinary 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 any
13 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 potential predator otherwise subject to commitment pursuant to
18 the Sexual Predator Civil Commitment Act.

19 Section 5. PETITION FOR COMMITMENT. --

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

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1 the agency of jurisdiction as provided in Subsection A of
2 Section 4 of the Sexual Predator Civil Commitment Act, alleging
3 that the potential predator is a sexually violent predator and
4 stating 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 no
7 way prevents the attorney general from proceeding against a
8 potential predator otherwise subject to the provisions of the
9 Sexual Predator Civil 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 Civil 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 this
19 section, the potential predator shall be provided with notice
20 of, and an opportunity to appear in person at, a hearing to
21 contest probable cause as to whether the potential predator is
22 a sexually violent predator. At the hearing, the court shall:

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

24 and

25 (2) determine whether probable cause exists to

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1 believe that the potential predator is a sexually violent
2 predator. The state may rely upon the petition or supplement
3 the petition with additional documentary evidence or live
4 testimony.

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

8 (1) be represented by counsel;

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

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

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

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

23 Section 7. TRIAL--PROCEDURE. --

24 A. Within sixty days after the completion of a
25 hearing held pursuant to Section 6 of the Sexual Predator Civil

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1 Commitment Act, the court shall conduct a trial to determine
2 whether the potential predator is a sexually violent predator.
3 The trial may be continued upon the request of either party
4 upon a showing of good cause, or by the court on its own motion
5 in the due administration of justice, so long as the potential
6 predator will not be substantially prejudiced.

7 B. At all stages of the proceedings under the
8 Sexual Predator Civil Commitment Act, a potential predator
9 shall be entitled to the assistance of counsel, and if the
10 person is indigent, the court shall appoint counsel to assist
11 the potential predator.

12 C. When a potential predator is subjected to an
13 examination pursuant to the Sexual Predator Civil Commitment
14 Act, the potential predator may retain experts or professional
15 persons to perform an examination on the potential predator's
16 behalf. When the potential predator wishes to be examined by a
17 qualified expert or professional person of the potential
18 predator's own choice, the examiner may have reasonable access
19 to the potential predator for the purpose of the examination,
20 as well as to all relevant medical and psychological records
21 and reports.

22 D. In the case of a potential predator who is
23 indigent, the court, upon the potential predator's request,
24 shall determine whether the services are necessary and if
25 compensation for the services is reasonable. If the court

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1 determines that the services are necessary and the expert or
2 professional person's requested compensation for the services
3 is reasonable, the court shall assist the potential predator in
4 obtaining an expert or professional person to perform an
5 examination or participate in the trial on the potential
6 predator's behalf. The court shall approve payment for the
7 services upon the filing of a certified claim for compensation
8 supported by a written statement specifying the time expended,
9 services rendered, expenses incurred on behalf of the potential
10 predator and compensation received in the same case or for the
11 same services from any other source.

12 E. The potential predator, the attorney general or
13 the court may demand that the trial be before a jury. A demand
14 for a jury trial shall be filed, in writing, at least four days
15 prior to trial. A jury shall consist of twelve jurors unless
16 the parties agree in writing, with the approval of the court,
17 that the jury shall consist of any number of jurors less than
18 twelve. If no demand is made, the trial shall be before the
19 court without a jury.

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

21 A. In a trial conducted pursuant to Section 7 of
22 the Sexual Predator Civil Commitment Act, the court or jury
23 shall determine whether, beyond a reasonable doubt, the
24 potential predator is a sexually violent predator. If the
25 determination is made by a jury, the determination shall be by

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

20 B. If a committed person, while committed to the
21 custody of the secretary, is taken into custody by a law
22 enforcement officer for a parole revocation proceeding, an
23 arrest or a conviction for a criminal offense of any nature,
24 upon release from the custody of the law enforcement officer,
25 the person shall be returned to the custody of the secretary

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

11 C. If the court or jury is not satisfied beyond a
12 reasonable doubt that the potential predator is a sexually
13 violent predator, the court shall direct the potential
14 predator's release.

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

22 E. If a potential predator charged with a sexually
23 violent offense is found to be incompetent to stand trial, and
24 the potential predator's commitment is sought pursuant to this
25 section, the judge or jury shall first hear evidence and

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

23 F. A determination that a person is a sexually
24 violent predator pursuant to this section may be appealed;
25 provided that the potential predator shall not be entitled to

1 release pending the appeal.

2 Section 9. ANNUAL EXAMINATION AND REVIEW. --

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

24 B. If a committed person has petitioned the court
25 for release and if, after reviewing the annual report and the

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

22 C. If, after the hearing, the court or jury is
23 convinced beyond a reasonable doubt that a committed person is
24 not an appropriate candidate for transitional release, the
25 court shall order that the committed person remain in secure

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1 commitment. Otherwise, the court shall order that the
2 committed person be placed in transitional release and the
3 secretary shall transfer the person to the transitional release
4 program.

5 Section 10. PETITION FOR TRANSITIONAL RELEASE--
6 PROCEDURE. --

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

25 B. If, after the hearing, the court is convinced

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1 beyond a reasonable doubt that the committed person is not an
2 appropriate candidate for transitional release, the court shall
3 order that the person remain in secure commitment. Otherwise,
4 the court shall order that the committed person be placed in
5 transitional release and the secretary shall transfer the
6 committed person to the transitional release program.

7 Section 11. TRANSITIONAL RELEASE. --

8 A. The secretary may contract for services to be
9 provided in the transitional release program. During the
10 period when a committed person is in transitional release, the
11 committed person shall comply with rules the secretary may
12 establish for the program and shall comply with every directive
13 of the treatment staff of the transitional release program.

14 B. When a committed person is in a transitional
15 release program and the treatment staff determines that the
16 committed person has violated a rule or directive associated
17 with the transitional release program, the treatment staff may
18 remove the person from the transitional release program and
19 return the person to the secure commitment facility, or may
20 request the district court to issue an emergency ex parte order
21 directing a law enforcement officer to take the person into
22 custody and return the person to a secure commitment facility.
23 The request may be made verbally or by telephone, but shall be
24 followed in written or facsimile form delivered to the court by
25 not later than 5:00 p.m. of the first day the district court is

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1 open for the transaction of business after the verbal or
2 telephonic request was made.

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

19 Section 12. CONDITIONAL RELEASE. --

20 A. During the period when a committed person is in
21 transitional release, the committed person at least annually,
22 and at any other time deemed appropriate by the treatment
23 staff, shall be examined by the treatment staff to determine if
24 the committed person's mental abnormality or personality
25 disorder has changed so as to warrant the committed person

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

19 B. If, after the hearing, the court is convinced
20 beyond a reasonable doubt that the committed person is not an
21 appropriate candidate for conditional release, the court shall
22 order that the committed person remain either in secure
23 commitment or in transitional release. Otherwise, the court
24 shall order that the committed person be placed on conditional
25 release.

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

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

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

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

18 B. Upon a showing by a committed person that the
19 committed person accepts the plan of treatment and is prepared
20 to follow it, the court shall release the committed person from
21 the transitional release program.

22 C. When a minimum of five years has passed and a
23 committed person has been free of violations of conditions of
24 the committed person's treatment plan, the treatment staff or
25 other professionals directed by the court may examine the

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1 committed person to determine if the person's mental
2 abnormality or personality disorder has changed so as to
3 warrant being considered for final discharge. A report shall
4 be forwarded to the court. After reviewing the report, if the
5 court determines that probable cause exists to believe that the
6 committed person's mental abnormality or personality disorder
7 has changed so that the person is safe to be considered for
8 final discharge, the court shall set a formal hearing on the
9 issue. The attorney general shall have the burden of proof to
10 show beyond a reasonable doubt that the committed person's
11 mental abnormality or personality disorder remains such that
12 the person is not an appropriate candidate for final discharge.
13 The committed person shall have the same rights as enumerated
14 in Section 7 of the Sexual Predator Civil Commitment Act.
15 Subsequent to either a court review or a hearing, the court
16 shall issue an appropriate order with findings of fact. The
17 order of the court shall be provided to the attorney general,
18 the committed person and the secretary.

19 D. If, after a hearing, the court is convinced
20 beyond a reasonable doubt that the committed person is not an
21 appropriate candidate for final discharge, the court shall
22 continue custody of the person with the secretary for placement
23 in a secure commitment facility, transitional release program
24 or conditional release program. Otherwise, the court shall
25 order the committed person finally discharged. In the event

1 the court does not order final discharge of the committed
2 person, the committed person still retains the right to annual
3 reviews.

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

17 F. When a committed person is returned to a secure
18 commitment facility from conditional release, notice thereof
19 shall be given by the secretary to the court. The court shall
20 set the matter for a hearing within two working days of receipt
21 of notice of the committed person's having been returned to the
22 secure commitment facility and cause notice thereof to be given
23 to the attorney general, the committed person and the
24 secretary. The attorney general shall have the burden of proof
25 to show probable cause that the committed person violated

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1 conditions of conditional release. The court shall conduct the
2 hearing without a jury. At the conclusion of the hearing, the
3 court shall issue an order returning the committed person to
4 the secure commitment facility, to the transitional release
5 program or to conditional release, and may order further
6 conditions with which the committed person must comply if the
7 person is returned to either the transitional release program
8 or to conditional release.

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

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

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

24 B. A failure to notify pursuant to this section
25 shall not create a cause of action against the state or an

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1 employee of the state who acts within the scope of his
2 employment.

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

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

22 Section 16. CONSTITUTIONAL PROTECTIONS. --The involuntary

23 detention or commitment of persons pursuant to the Sexual
24 Predator Civil Commitment Act shall conform to all
25 constitutional requirements for care and treatment.

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1 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--
2 PROCEDURE. --

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

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

19 C. The district attorney shall not withdraw the
20 special allegation of sexual motivation without approval of the
21 court, through an order of dismissal of the special allegation.
22 The court shall not dismiss the special allegation unless it
23 finds that the order is necessary to correct an error in the
24 initial charging decision or unless there are evidentiary
25 problems that make proving the special allegation doubtful.

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

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

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

23 Section 21. COSTS-- RESPONSIBILITY OF SECRETARY. -- The
24 secretary is responsible for all costs relating to the
25 evaluation and treatment of committed persons pursuant to any

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1 provision of the Sexual Predator Civil Commitment Act.
2 Reimbursement may be obtained by the secretary for the cost of
3 care and treatment, including placement in transitional
4 release, of committed persons who are not indigent by assessing
5 a fee pursuant to Section 43-1-25 NMSA 1978.

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

10 Section 23. APPROPRIATION.--Eleven million dollars
11 (\$11,000,000) is appropriated from the general fund to the
12 department of health for expenditure in fiscal year 2005 to
13 carry out the purposes of the Sexual Predator Civil Commitment
14 Act. Any unexpended or unencumbered balance remaining at the
15 end of fiscal year 2005 shall revert to the general fund.

16 Section 24. APPROPRIATION.--One hundred fifty thousand
17 dollars (\$150,000) is appropriated from the general fund to the
18 office of the attorney general for expenditure in fiscal year
19 2005 to carry out the purposes of the Sexual Predator Civil
20 Commitment Act. Any unexpended or unencumbered balance
21 remaining at the end of fiscal year 2005 shall revert to the
22 general fund.

23 Section 25. APPROPRIATION.--One hundred fifty thousand
24 dollars (\$150,000) is appropriated from the general fund to the
25 public defender department for expenditure in fiscal year 2005

1 to carry out the purposes of the Sexual Predator Civil
2 Commitment Act. Any unexpended or unencumbered balance
3 remaining at the end of fiscal year 2005 shall revert to the
4 general fund.

5 Section 26. APPROPRIATION. --Two hundred thousand dollars
6 (\$200,000) is appropriated from the general fund to the
7 administrative office of the courts for expenditure in fiscal
8 year 2005 to carry out the purposes of the Sexual Predator
9 Civil Commitment Act. Any unexpended or unencumbered balance
10 remaining at the end of fiscal year 2005 shall revert to the
11 general fund.

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