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**SENATE BILL 42**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**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

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

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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



1 committed. 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

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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

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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. APPROPRIATIONS.--

11 A. Eleven million dollars (\$11,000,000) is  
12 appropriated from the general fund to the department of health  
13 for expenditure in fiscal year 2006 to carry out the purposes  
14 of the Sexual Predator Civil Commitment Act. Any unexpended or  
15 unencumbered balance remaining at the end of fiscal year 2006  
16 shall revert to the general fund.

17 B. One hundred fifty thousand dollars (\$150,000) is  
18 appropriated from the general fund to the office of the  
19 attorney general for expenditure in fiscal year 2006 to carry  
20 out the purposes of the Sexual Predator Civil Commitment Act.  
21 Any unexpended or unencumbered balance remaining at the end of  
22 fiscal year 2006 shall revert to the general fund.

23 C. One hundred fifty thousand dollars (\$150,000) is  
24 appropriated from the general fund to the public defender  
25 department for expenditure in fiscal year 2006 to carry out the

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1 purposes of the Sexual Predator Civil Commitment Act. Any  
2 unexpended or unencumbered balance remaining at the end of  
3 fiscal year 2006 shall revert to the general fund.

4 D. Two hundred thousand dollars (\$200,000) is  
5 appropriated from the general fund to the administrative office  
6 of the courts for expenditure in fiscal year 2006 to carry out  
7 the purposes of the Sexual Predator Civil Commitment Act. Any  
8 unexpended or unencumbered balance remaining at the end of  
9 fiscal year 2006 shall revert to the general fund.

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