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SENATE BILL 201

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

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 who has been  
21 committed to the custody of the department, whether in a secure  
22 commitment facility, a transitional release program or a  
23 conditional 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 the person's behavior;

5 E. "mental abnormality or personality disorder"  
6 means a congenital or acquired condition that affects the  
7 emotional or volitional capacity of a person and predisposes  
8 the person to commit sexually violent offenses;

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

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

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

16 I. "sexually violent offense" means:

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

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

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

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

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

3 (6) child solicitation by electronic  
4 communication device, as provided in Section 30-37-3.2 NMSA  
5 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 at the time of sentencing for the  
20 offense has been determined beyond a reasonable doubt to have  
21 been sexually motivated;

22 J. "sexually violent predator" means a person who  
23 has been convicted of a sexually violent offense and who  
24 suffers from a mental abnormality or personality disorder that  
25 makes the person likely to engage in repeat acts of sexual

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1 violence and who has serious difficulty in controlling the  
2 person's behavior;

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

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

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

12 A. When it appears to an agency with jurisdiction  
13 that a person may be a potential predator, the agency shall  
14 give written notice to the attorney general and the  
15 multidisciplinary team established in Subsection C of this  
16 section. The notice shall be given no less than ninety days  
17 prior to:

18 (1) the anticipated release from total  
19 confinement of a potential predator who has been convicted of a  
20 sexually violent offense, except that, in the case of a  
21 potential predator who is returned to confinement for no more  
22 than ninety days as a result of revocation of parole or other  
23 post-release supervision, written notice shall be given as soon  
24 as practicable following the potential predator's readmission  
25 to confinement;

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

4 (3) the release of a potential predator who  
5 has been found not guilty by reason of insanity of a sexually  
6 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. In consultation with the sex offender management  
15 board created pursuant to Section 9-3-13 NMSA 1978, the  
16 secretary of corrections shall establish a multidisciplinary  
17 team, which may include individuals from other state agencies,  
18 to review available records of each potential predator referred  
19 to the team pursuant to Subsection A of this section. The  
20 team, within thirty days of receiving notice, shall assess  
21 whether the potential predator is a sexually violent predator.  
22 The team shall notify the attorney general of its assessment.

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

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

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

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

18 Section 5. PETITION FOR COMMITMENT.--

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

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1 Section 4 of the Sexual Predator Civil Commitment Act, alleging  
2 that the potential predator is a sexually violent predator and  
3 stating sufficient facts to support the allegation.

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

9 Section 6. DETERMINATION OF PROBABLE CAUSE.--

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

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

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

24 (2) determine whether probable cause exists to  
25 believe that the potential predator is a sexually violent



1 predator. The state may rely upon the petition or supplement  
2 the petition with additional documentary evidence or live  
3 testimony.

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

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

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

22 Section 7. TRIAL--PROCEDURE.--

23 A. Within sixty days after the completion of a  
24 hearing held pursuant to Section 6 of the Sexual Predator Civil  
25 Commitment Act, the court shall conduct a trial to determine

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

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

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

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

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

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

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

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

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1 potential predator is a sexually violent predator, the person  
2 shall be committed to the custody of the secretary for care,  
3 treatment and control until such time as the mental abnormality  
4 or personality disorder has changed so that the committed  
5 person is no longer a menace to the health and safety of others  
6 and is safe to be at large. The care, treatment and control of  
7 the committed person shall be provided at a facility operated  
8 by the department. At all times, a committed person provided  
9 with care, treatment and control by the department shall be  
10 kept in a secure facility and shall be segregated at all times  
11 from other patients under the supervision of the secretary.

12 The department may enter into an agreement with the corrections  
13 department for the confinement of sexually violent predators.  
14 Sexually violent predators committed to the jurisdiction of the  
15 corrections department shall be housed and managed separately  
16 from other offenders in the custody of the corrections  
17 department and, except for occasional instances of supervised  
18 incidental contact, shall be segregated from other offenders.

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

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

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

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

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

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

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

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1           Section 9. ANNUAL EXAMINATION AND REVIEW.--

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

23           B. If a committed person has petitioned the court  
24 for release and if, after reviewing the annual report and the  
25 information contained in the petition, the court at the review

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1 determines that probable cause exists to believe that the  
2 committed person's mental abnormality or personality disorder  
3 has changed so that the committed person is no longer a menace  
4 to the health and safety of others and is safe to be placed in  
5 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 shall be entitled to  
8 the benefit of all constitutional protections that were  
9 afforded the committed person at the initial commitment trial.  
10 The 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 a menace to the health and safety of  
20 others and is not safe to be placed in transitional release and  
21 that if placed in transitional release is likely to engage in  
22 acts of sexual violence.

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

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

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

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

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1 offense.

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

9 Section 11. TRANSITIONAL RELEASE.--

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

17 B. When a committed person is in a transitional  
18 release program and the treatment staff determines that the  
19 committed person has violated a rule or directive associated  
20 with the transitional release program, the treatment staff may  
21 remove the person from the transitional release program and  
22 return the person to a secure commitment facility, or may  
23 request the district court to issue an emergency ex parte order  
24 directing a law enforcement officer to take the person into  
25 custody and return the person to a secure commitment facility.

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1 The request may be made verbally or by telephone, but it shall  
2 be followed in written or facsimile form delivered to the court  
3 by not later than 5:00 p.m. on the first day the district court  
4 is open for the transaction of business after the verbal or  
5 telephonic request was made.

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

22 Section 12. CONDITIONAL RELEASE.--

23 A. During the period when a committed person is in  
24 a transitional release program, the committed person at least  
25 annually, and at any other time deemed appropriate by the

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1 treatment staff, shall be examined by the treatment staff to  
2 determine if the committed person's mental abnormality or  
3 personality disorder has changed so as to warrant the committed  
4 person being considered for a conditional release program. The  
5 treatment staff shall forward a report of its examination to  
6 the court. After reviewing the report, if the court determines  
7 that probable cause exists to believe that the committed  
8 person's mental abnormality or personality disorder has changed  
9 so that the committed person is no longer a menace to the  
10 health and safety of others and is safe to be placed in a  
11 conditional release program, the court shall set a hearing on  
12 the issue. The attorney general shall have the burden of proof  
13 to show beyond a reasonable doubt that the committed person's  
14 mental abnormality or personality disorder remains such that  
15 the committed person is a menace to the health and safety of  
16 others and is not safe to be at large and that if placed on  
17 conditional release is likely to engage in acts of sexual  
18 violence. The committed person shall have the same rights as  
19 enumerated in Section 7 of the Sexual Predator Civil Commitment  
20 Act. Subsequent to either a court review or a hearing, the  
21 court shall issue an appropriate order with findings of fact.  
22 The order of the court shall be provided to the attorney  
23 general, the committed person and the secretary.

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

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1 appropriate candidate for a conditional release program, the  
2 court shall order that the committed person remain either in  
3 secure commitment or in a transitional release program.  
4 Otherwise, the court shall order that the committed person be  
5 placed in a conditional release program.

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

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

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

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

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

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1 the transitional release program.

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

25 D. If, after a 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 final discharge, the court shall  
3 continue custody of the person with the secretary for placement  
4 in a secure commitment facility, transitional release program  
5 or conditional release program. Otherwise, the court shall  
6 order the committed person finally discharged. In the event  
7 the court does not order final discharge of the committed  
8 person, the committed person still retains the right to annual  
9 reviews.

10 E. At any time during which a committed person is  
11 in a conditional release program and the professional  
12 designated by the court in the treatment plan to monitor the  
13 person's compliance with the plan determines that the person  
14 has violated a material condition of that plan, the  
15 professional may request the district court to issue an  
16 emergency ex parte order directing a law enforcement officer to  
17 take the committed person into custody and return the committed  
18 person to a secure commitment facility. The request may be  
19 made verbally or by telephone, but it shall be followed in  
20 written or facsimile form delivered to the court not later than  
21 5:00 p.m. on the first day the district court is open for the  
22 transaction of business after the verbal or telephonic request  
23 was made.

24 F. When a committed person is returned to a secure  
25 commitment facility from a conditional release program, notice

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1       thereof shall be given by the secretary to the court. The  
2       court shall set the matter for a hearing within two working  
3       days of receipt of notice of the committed 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 committed  
8       person violated conditions of the conditional release program.  
9       The court shall conduct the hearing without a jury. At the  
10      conclusion of the hearing, the court shall issue an order  
11      returning the committed person to the secure commitment  
12      facility, to the transitional release program or to the  
13      conditional release program and may order further conditions  
14      with which the committed person must comply if the person is  
15      returned to either the transitional release program or to the  
16      conditional release program.

17               G. A final discharge shall not prevent a person  
18      from being prosecuted for any criminal acts that the person is  
19      alleged to have committed or from being subject in the future  
20      to a subsequent commitment pursuant to the Sexual Predator  
21      Civil Commitment Act.

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

24               A. In addition to any other information required to  
25      be released pursuant to the Sexual Predator Civil Commitment

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1 Act, prior to the release of a person committed pursuant to  
2 that act, the secretary shall give written notice of the  
3 person's placement or release to any victim of the person's  
4 activities or crime whose address is known to the secretary;  
5 provided that failure to notify shall not be a reason for  
6 postponement of release.

7 B. A failure to notify pursuant to this section  
8 shall not create a cause of action against the state or an  
9 employee of the state who acts within the scope of employment.

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

11 Nothing in the Sexual Predator Civil Commitment Act shall  
12 prohibit a committed person from filing a petition for  
13 transitional release, conditional release or final discharge  
14 pursuant to the provisions of that act; provided that, if a  
15 committed person has previously filed a petition for  
16 transitional release, conditional release or final discharge  
17 without the secretary's approval and the court determined,  
18 either upon review of the petition or following a hearing, that  
19 the petition was frivolous or that the committed person's  
20 condition had not so changed that the committed person was no  
21 longer a menace to the health and safety of others and was safe  
22 to be at large, the court shall deny the subsequent petition  
23 unless it contains facts upon which a court could find the  
24 condition of the committed person had changed so that a hearing  
25 was warranted. Upon receipt of a first or subsequent petition

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1 from a committed person without the secretary's approval, the  
2 court shall endeavor whenever possible to review the petition  
3 and determine if the petition is based upon frivolous grounds  
4 and, if so, shall deny the petition without a hearing.

5 Section 16. CONSTITUTIONAL PROTECTIONS.--The involuntary  
6 detention or commitment of persons pursuant to the Sexual  
7 Predator Civil Commitment Act shall conform to all  
8 constitutional requirements for care and treatment.

9 Section 17. SPECIAL ALLEGATION OF SEXUAL MOTIVATION--  
10 PROCEDURE.--

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

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

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1 motivation.

2 C. The district attorney shall not withdraw the  
3 special allegation of sexual motivation without approval of the  
4 court, through an order of dismissal of the special allegation.  
5 The court shall not dismiss the special allegation unless it  
6 finds that the order is necessary to correct an error in the  
7 initial charging decision or unless there are evidentiary  
8 problems that make proving the special allegation doubtful.

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

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

24 Section 20. INELIGIBILITY FOR BAIL, BOND, HOUSE ARREST OR  
25 OTHER RELEASE.--A potential predator for whom a petition

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1 pursuant to Section 5 of the Sexual Predator Civil Commitment  
2 Act has been filed and who is in the secure confinement of the  
3 state shall not be eligible for bail, bond, house arrest or any  
4 other measures for releasing the person from the physical,  
5 protective custody of the state.

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

14 Section 22. APPROPRIATIONS.--

15 A. Eleven million dollars (\$11,000,000) is  
16 appropriated from the general fund to the department of health  
17 for expenditure in fiscal year 2009 to carry out the purposes  
18 of the Sexual Predator Civil Commitment Act. Any unexpended or  
19 unencumbered balance remaining at the end of fiscal year 2009  
20 shall revert to the general fund.

21 B. One hundred fifty thousand dollars (\$150,000) is  
22 appropriated from the general fund to the office of the  
23 attorney general for expenditure in fiscal year 2009 to carry  
24 out the purposes of the Sexual Predator Civil Commitment Act.  
25 Any unexpended or unencumbered balance remaining at the end of

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1 fiscal year 2009 shall revert to the general fund.

2 C. One hundred fifty thousand dollars (\$150,000) is  
3 appropriated from the general fund to the public defender  
4 department for expenditure in fiscal year 2009 to carry out the  
5 purposes of the Sexual Predator Civil Commitment Act. Any  
6 unexpended or unencumbered balance remaining at the end of  
7 fiscal year 2009 shall revert to the general fund.

8 D. Two hundred thousand dollars (\$200,000) is  
9 appropriated from the general fund to the administrative office  
10 of the courts for expenditure in fiscal year 2009 to carry out  
11 the purposes of the Sexual Predator Civil Commitment Act. Any  
12 unexpended or unencumbered balance remaining at the end of  
13 fiscal year 2009 shall revert to the general fund.