CHAPTER 48

Sexually Violent Predator Act

Editor's Note

1998 Act No. 321, Section 7, effective June 5, 1998, provides as follows:

"This act takes effect upon approval by the Governor and applies to any person who, on the effective date of the act, is serving a sentence for any offense set forth in Section 44‑48‑30(2) as well as to any person who is convicted of a sexually violent offense on or after the effective date of this act."

**SECTION 44‑48‑10.** Short title.

 This chapter is known and may be cited as the "Sexually Violent Predator Act".

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑20.** Legislative findings.

 The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long‑term control, care, and treatment. The General Assembly further finds that the likelihood these sexually violent predators will engage in repeated acts of sexual violence if not treated for their mental conditions is significant. Because the existing civil commitment process is inadequate to address the special needs of sexually violent predators and the risks that they present to society, the General Assembly has determined that a separate, involuntary civil commitment process for the long‑term control, care, and treatment of sexually violent predators is necessary. The General Assembly also determines that, because of the nature of the mental conditions from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily‑committed sexually violent predators in secure facilities separate from persons involuntarily committed under traditional civil commitment statutes. The civil commitment of sexually violent predators is not intended to stigmatize the mentally ill community.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑30.** Definitions.

 For purposes of this chapter:

 (1) "Sexually violent predator" means a person who:

 (a) has been convicted of a sexually violent offense; and

 (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long‑term control, care, and treatment.

 (2) "Sexually violent offense" means:

 (a) criminal sexual conduct in the first degree, as provided in Section 16‑3‑652;

 (b) criminal sexual conduct in the second degree, as provided in Section 16‑3‑653;

 (c) criminal sexual conduct in the third degree, as provided in Section 16‑3‑654;

 (d) criminal sexual conduct with minors in the first degree, as provided in Section 16‑3‑655(A);

 (e) criminal sexual conduct with minors in the second degree, as provided in Section 16‑3‑655(B);

 (f) criminal sexual conduct with minors in the third degree, as provided in Section 16‑3‑655(C);

 (g) engaging a child for a sexual performance, as provided in Section 16‑3‑810;

 (h) producing, directing, or promoting sexual performance by a child, as provided in Section 16‑3‑820;

 (i) assault with intent to commit criminal sexual conduct, as provided in Section 16‑3‑656;

 (j) incest, as provided in Section 16‑15‑20;

 (k) buggery, as provided in Section 16‑15‑120;

 (l) violations of Article 3, Chapter 15, Title 16 involving a minor when the violations are felonies;

 (m) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16‑1‑40;

 (n) attempt to commit an offense enumerated in this item as provided by Section 16‑1‑80;

 (o) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the person's offense should be considered a sexually violent offense; or

 (p) criminal solicitation of a minor, as provided in Section 16‑15‑342, if the purpose or intent of the solicitation or attempted solicitation was to:

 (i) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16‑15‑375(5); or

 (ii) perform a sexual activity in the presence of the person solicited.

 (3) "Mental abnormality" means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses.

 (4) "Sexually motivated" means that one of the purposes for which the person committed the crime was for the purpose of the person's sexual gratification.

 (5) "Agency with jurisdiction" means that agency which, upon lawful order or authority, releases a person serving a sentence or term of confinement and includes the South Carolina Department of Corrections, the South Carolina Department of Probation, Parole and Pardon Services, the Board of Probation, Parole and Pardon Services, the Department of Juvenile Justice, the Juvenile Parole Board, and the Department of Mental Health.

 (6) "Convicted of a sexually violent offense" means a person has:

 (a) pled guilty to, pled nolo contendere to, or been convicted of a sexually violent offense;

 (b) been adjudicated delinquent as a result of the commission of a sexually violent offense;

 (c) been charged but determined to be incompetent to stand trial for a sexually violent offense;

 (d) been found not guilty by reason of insanity of a sexually violent offense; or

 (e) been found guilty but mentally ill of a sexually violent offense.

 (7) "Court" means the court of common pleas.

 (8) "Total confinement" means incarceration in a secure state or local correctional facility and does not mean any type of community supervision.

 (9) "Likely to engage in acts of sexual violence" means that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in acts of sexual violence to such a degree as to pose a menace to the health and safety of others.

 (10) "Person" means an individual who is a potential or actual subject of proceedings under this act and includes a child under seventeen years of age.

 (11) "Victim" means an individual registered with the agency of jurisdiction as a victim or as an intervenor.

 (12) "Intervenor" means an individual, other than a law enforcement officer performing his ordinary duties, who provides aid to another individual who is not acting recklessly, in order to prevent the commission of a crime or to lawfully apprehend an individual reasonably suspected of having committed a crime.

 (13) "Qualified evaluator" means an individual who has education, training, and experience in sex offender evaluations and who is:

 (a) a licensed psychiatrist or psychologist; or

 (b) a trainee of the Department of Mental Health Fellowship Program who is working under the supervision and license of a Department of Mental Health psychiatrist or psychologist and who is approved for exemption by the Department of Mental Health Fellowship Program.

 (14) "Resident" means a person who has been committed as a sexually violent predator for the purposes of long‑term control, care, and treatment.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2004 Act No. 208, Section 15, eff April 26, 2004; 2012 Act No. 255, Section 11, eff June 18, 2012; 2023 Act No. 19 (S.146), Sections 1, 2, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 1, added (13) and (14).

2023 Act No. 19, Section 2, in (9), substituted "that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in acts of sexual violence to" for "the person's propensity to commit acts of sexual violence is of".

**SECTION 44‑48‑40.** Notification to team, victim and Attorney General regarding release, hearing or parole; effective date of parole or release; immunity.

 (A) If a person has been convicted of a sexually violent offense, the agency with jurisdiction must give written notice to the multidisciplinary team established in Section 44‑48‑50, the victim, and the Attorney General at least two hundred seventy days before:

 (1) the person's anticipated release from total confinement, except that in the case of a person who is returned to prison for no more than two hundred seventy days as a result of a revocation of any type of community supervision program, written notice must be given as soon as practicable following the person's readmission to prison;

 (2) the anticipated hearing on fitness to stand trial following notice under Section 44‑23‑460 of a person who has been charged with a sexually violent offense but who was found unfit to stand trial for the reasons set forth in Section 44‑23‑410 following a hearing held pursuant to Section 44‑23‑430;

 (3) the anticipated hearing pursuant to Section 17‑24‑40(C) of a person who has been found not guilty by reason of insanity of a sexually violent offense; or

 (4) release of a person who has been found guilty of a sexually violent offense but mentally ill pursuant to Section 17‑24‑20.

 (B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release or supervised reentry, then the parole, conditional release, or supervised reentry must be granted to be effective one hundred eighty days after the date of the order of parole, conditional release, or supervised reentry. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole, conditional release, or supervised reentry of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, then the person is subject to the provisions of this chapter even though the person has been released on parole, conditional release, or supervised reentry. If at any time the person is determined to not be a sexually violent predator pursuant to this chapter, then the person shall be released pursuant to the order granting parole, or the order for conditional release or supervised reentry.

 (C) The agency with jurisdiction must inform the multidisciplinary team, the victim, and the Attorney General of:

 (1) the person's name, identifying factors, anticipated future residence, and offense history; and

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

 (D) The agency with jurisdiction, its employees, officials, individuals contracting, appointed, or volunteering to perform services under this chapter, the multidisciplinary team, and the prosecutor's review committee established in Section 44‑48‑60 are immune from civil or criminal liability for any good‑faith conduct under this act.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004, except subsection (A); 2010 Act No. 158, Section 1, eff November 8, 2010; 2023 Act No. 19 (S.146), Section 3, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 3, rewrote (B).

**SECTION 44‑48‑50.** Multidisciplinary team; appointments; review of records; membership.

 (A) The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44‑48‑40. These records may include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44‑48‑40, must assess whether or not there is probable cause to believe the person satisfies the definition of a sexually violent predator. If it is determined that probable cause does exist, then the multidisciplinary team must forward a report of the assessment to the prosecutor's review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment. Membership of the team must include:

 (1) a representative from the Department of Corrections;

 (2) a representative from the Department of Probation, Parole and Pardon Services;

 (3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with education, training, or experience in assessing, examining, or treating sex offenders;

 (4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2‑19‑100; and

 (5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.

 (B) The Director of the Department of Corrections or his designee appointed pursuant to subsection (A)(1) shall be the chairman of the team.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2023 Act No. 19 (S.146), Section 4, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 4, inserted the (A) and (B) designators; in (A), in the third sentence, inserted "there is probable cause to believe", and in the fourth sentence, substituted "probable cause does exist, then" for "the person satisfies the definition of a sexually violent predator,", and in (3), substituted "education, training, or experience in assessing, examining, or treating sex offenders" for "expertise in treating sexually violent offenders"; and in (B), substituted "subsection (A)(1)" for "item (1)".

**SECTION 44‑48‑60.** Prosecutor's review committee; scope of review; membership requirements.

 The Attorney General must appoint a prosecutor's review committee to review the report and records of each person referred to the committee by the multidisciplinary team. The prosecutor's review committee must determine whether or not probable cause exists to believe the person is a sexually violent predator. The prosecutor's review committee must make the probable cause determination within thirty days of receiving the report and records from the multidisciplinary team. The prosecutor's review committee must include, but is not limited to, a member of the staff of the Attorney General, an elected circuit solicitor, and a victim's representative. The Attorney General or his designee shall be the chairman of the committee. In addition to the records and reports considered pursuant to Section 44‑48‑50, the committee must also consider information provided by the circuit solicitor who prosecuted the person.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑70.** Petition for probable cause determination.

 When the prosecutor's review committee has determined that probable cause exists to support the allegation that the person is a sexually violent predator, the Attorney General must file a petition with the court in the jurisdiction where the person committed the offense and must notify the victim that the committee found that probable cause exists. The Attorney General must also notify the victim of the time, date, and location of the probable cause hearing before the court. The petition, which must be filed within thirty days of the probable cause determination by the prosecutor's review committee, must request that the court make a probable cause determination as to whether the person is a sexually violent predator. The petition must allege that the person is a sexually violent predator and must state sufficient facts that would support a probable cause allegation.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑80.** Determination of probable cause; taking person into custody; hearing; evaluation.

 (A) Upon filing of a petition, the court must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines that probable cause exists to believe that the person is a sexually violent predator, the person must be taken into custody if he is not already confined in a secure facility.

 (B) Immediately upon being taken into custody pursuant to subsection (A), the person must be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexually violent predator. This hearing must be held within seventy‑two hours after a person is taken into custody pursuant to subsection (A). At this hearing the court must:

 (1) verify the detainee's identity;

 (2) receive evidence and hear arguments from the person and the Attorney General; and

 (3) determine whether probable cause exists to believe that the person is a sexually violent predator.

 The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

 (C) At the probable cause hearing as provided in subsection (B), the detained person has the following rights in addition to any rights previously specified:

 (1) to be represented by counsel;

 (2) to present evidence on the person's behalf;

 (3) to cross‑examine witnesses who testify against the person; and

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

 (D) If the probable cause determination is made, then the court must direct that, upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending the conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator and must order the person to comply with all reasonable testing and assessments deemed necessary by a court‑appointed qualified evaluator. The court‑appointed qualified evaluator must complete the evaluation within ninety days after the Department of Mental Health provides written certification to the Attorney General's Office and the person's legal counsel that it has received all medical, psychological, criminal offense, and disciplinary records and reports concerning the person but not greater than one hundred eighty days after the probable cause order is filed. The court may grant one extension upon the request of the court‑appointed qualified evaluator and a showing of extraordinary circumstances. After the evaluation by the court‑appointed qualified evaluator, if the person or the Attorney General seeks an independent evaluation by an independent qualified evaluator, pursuant to Section 44‑48‑90(C), then that evaluation must be completed within ninety days after receipt of the report by the court‑appointed qualified evaluator. The court may grant an extension upon the request of the independent qualified evaluator and a showing of extraordinary circumstances. Any qualified evaluator who will be submitted as an expert at either a hearing or trial must submit a written report available to both parties.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2010 Act No. 158, Section 2, eff May 12, 2010; 2023 Act No. 19 (S.146), Section 5, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 5, rewrote (D).

**SECTION 44‑48‑90.** Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.

 (A) The court must conduct a trial to determine whether the person is a sexually violent predator.

 (B) Within thirty days after the determination of probable cause by the court pursuant to Section 44‑48‑80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the independent qualified evaluator requested by the person or Attorney General pursuant to Section 44‑48‑90(C) issues a report as to whether the person is a sexually violent predator, pursuant to Section 44‑48‑80(D), or, if there is no term of court, the next available date thereafter, and the case shall be treated as a priority case. If neither party seeks an independent evaluation, then the trial must be before a judge, or a jury if a jury trial is requested, in the county where the offense was committed within ninety days of the date the court appointed qualified evaluator issues the report as to whether the person is a sexually violent predator, pursuant to Section 44‑48‑80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel designated by the Office of Indigent Defense to handle sexual predator cases to assist the person.

 (C) If the court appointed qualified evaluator determines that the person is not a sexually violent predator, then the Attorney General, with notice to the person, may seek an independent evaluation pursuant to this section. If the court appointed qualified evaluator determines that the person is a sexually violent predator, then the person, with notice to the Attorney General, may seek an opinion by an independent qualified evaluator pursuant to this section. In the case of an indigent person who requests an independent qualified evaluator, the indigent person must file and serve upon the Attorney General and the Commission on Indigent Defense a motion requesting payment and costs. The Attorney General shall have ten days from the date of service to file a response to the motion. If the court determines that the services are necessary and the requested compensation for the independent qualified evaluator is reasonable, then the court must authorize, in a written order prior to any fees or expenses being incurred, the person's attorney to obtain the services of an independent qualified evaluator to perform an evaluation or participate in the trial on the person's behalf and must authorize the payment from funds available to the Commission on Indigent Defense. All qualified evaluators are permitted to have reasonable access to the person for the purpose of the evaluation, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. The court shall order the person to comply with any reasonable testing and assessments deemed necessary by the qualified evaluator for a thorough evaluation.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2010 Act No. 158, Section 3, eff May 12, 2010; 2023 Act No. 19 (S.146), Section 6, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 6, rewrote (B) and (C).

**SECTION 44‑48‑100.** Standard for determining predator status; control, care, and treatment of person; release; mistrial procedures; persons incompetent to stand trial.

 (A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release. Upon a mistrial, the court must direct that the person be held at a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.

 (B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), then the court first shall conduct a non‑jury hearing, where it will hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal hearings, except the right not to be tried while incompetent and the right to a jury trial, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, then the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2010 Act No. 158, Section 4, eff May 12, 2010; 2023 Act No. 19 (S.146), Section 7, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 7, in (B), in the first sentence, substituted "then the court first shall conduct a non‑jury hearing, where it will" for "the court first shall", in the third sentence, substituted "hearings, except the right not to be tried while incompetent and the right to a jury trial" for "trials, other than the right not to be tried while incompetent", and made a nonsubstantive change.

**SECTION 44‑48‑110.** Evaluation of mental condition and related proceedings.

 (A)(1) A resident committed pursuant to this chapter must have an evaluation of his mental condition performed by a Department of Mental Health‑designated qualified evaluator within one year from the filing date of the initial commitment order. Thereafter, a Department of Mental Health‑designated qualified evaluator will evaluate the resident's mental condition within one year after a pending review is resolved by a filed court order indicating:

 (a) a finding of no probable cause;

 (b) a waiver by the resident; or

 (c) an order of continued commitment after a periodic review trial.

 (2) The designated qualified evaluator's report must be provided to the clerk of the court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, the solicitor who prosecuted the resident, and the resident. The resident is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel designated by the Office of Indigent Defense to handle sexual predator cases to assist the person.

 (B) The resident may retain or, if the resident is indigent and so requests, the court may appoint a qualified evaluator to evaluate the resident, and the resident's qualified evaluator must have reasonable access to all medical, psychological, criminal offense, disciplinary, and treatment records and reports concerning the resident. In the case of an indigent resident who seeks to retain a qualified evaluator, the indigent resident must file and serve upon the Attorney General and the Commission on Indigent Defense a motion requesting payment and costs. The Attorney General shall have ten days from the date of service to file a response to the motion. If, after considering the number and dates of the resident's prior requests for funding, the court determines the resident's request is reasonable, then the court must approve all reasonable expenses associated with the evaluation.

 (C) The Attorney General must serve upon the resident a copy of the annual report along with a notice of the right to request a hearing within sixty days of service. The resident must request a hearing in writing for the court to review the resident's status. If no request is made within sixty days of service, the resident's right to a hearing pursuant to this chapter is deemed waived.

 (D) The Department of Mental Health must provide the resident with written notice of the resident's right to petition the court for release without the Department of Mental Health's authorization and a waiver of rights form, within one year of the last periodic review order or waiver of rights. The department must forward the designated qualified evaluator's report with the notice and waiver form to the clerk of court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident.

 (E) The resident has a right to have an attorney represent him at the periodic review hearing, but the resident is not entitled to be present at the hearing. The resident may only be present at the hearing upon the issuance of a transport order received by the Department of Mental Health within not less than fifteen days of the hearing date. The Department of Mental Health‑designated qualified evaluator will only be required to be present at the hearing if subpoenaed by the resident's attorney or the Attorney General in accordance with the South Carolina Rules of Civil Procedure. The Department of Mental Health must accept service of subpoenas for the appearance of the Department of Mental Health‑designated qualified evaluator at the periodic review hearing.

 (F) If the court determines that probable cause exists to believe that the resident's mental abnormality or personality disorder has so changed that the resident is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the resident is entitled to the benefit of all constitutional protections that were afforded the resident at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the resident evaluated by a qualified evaluator chosen by the State. The trial must be before a jury if requested in writing by either the resident, the Attorney General, or the solicitor. If no request is made, the trial must be before a judge in the county where the offense was committed. The resident also has the right to have a qualified evaluator evaluate the resident on the resident's behalf, and the court must appoint a qualified evaluator if the resident is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the resident's mental abnormality or personality disorder remains such that the resident is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2023 Act No. 19 (S.146), Section 8, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 8, rewrote the section.

**SECTION 44‑48‑115.** Ineffective assistance of counsel.

 (A) A resident committed to the South Carolina Sexually Violent Predator Treatment Program shall have the right to challenge the commitment and subsequent periodic reviews based on the ineffective assistance of counsel during the resident's commitment trial or periodic review proceedings. The resident shall have the burden of proof to establish ineffective assistance of counsel in accordance with the applicable law.

 (B) Petitions shall be filed in the original jurisdiction of the South Carolina Supreme Court under the South Carolina Appellate Court Rules within one hundred eighty days of the date that any appeals from the commitment or periodic review proceedings are final. Upon the receipt of the petition, the Clerk of Court of the Supreme Court shall issue an order designating a circuit court or appellate court judge as a referee to make appropriate findings of fact and conclusions of law and shall report the findings and conclusions to the Supreme Court. The designated judge shall have the statewide authority to issue orders as necessary.

 (C) Except as provided in this chapter, the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence apply to cases filed pursuant to this section, in evidentiary hearings before the designated hearing judge.

 (D) The named respondent shall be the Department of Mental Health. A copy of the petition shall be served on the Department of Mental Health and the South Carolina Attorney General's Office.

 (E) Upon the filing of a petition alleging that the resident is indigent and desires appointed counsel, the designated judge shall appoint an attorney to represent the resident. Counsel shall be appointed from the contract attorney list of post‑conviction counsel maintained by the South Carolina Commission on Indigent Defense, or such other list of attorneys as the Executive Director of the South Carolina Commission on Indigent Defense shall designate. If no attorney is available from this list, then the designated circuit court judge shall appoint an attorney from the Appointment of Lawyers for Indigents. The designated judge shall not appoint an attorney who previously represented the resident in any prior criminal proceedings underlying the commitment or state post‑conviction relief proceedings or appeals from those proceedings, in the original sexually violent predator civil commitment proceeding or appeal from that proceeding, or in any previous or present periodic reviews or appeals therefrom.

 (F) The designated judge shall authorize by court order to the particular county clerks of court the disclosure of any pleadings, evidence, transcripts, or other documents filed in any circuit court or appellate court clerk's office of this State in any case in which the resident was a defendant, respondent, or party to a criminal action or an action under the Sexually Violent Predator Act that was ordered sealed. These materials shall be unsealed for the limited purpose of providing items to the appointed counsel for the resident or the resident himself, if he elects to proceed pro se, and to the Department of Mental Health and its attorneys.

 (G) Regardless of whether the resident indicates that he has served the Department of Mental Health, the Clerk of Court of the South Carolina Supreme Court shall forward the filed petition and all accompanying papers to the Department of Mental Health's Office of General Counsel, as the agent for the service of process for the Department of Mental Health, and a copy to the Attorney General's Office. The Department of Mental Health, through the Attorney General's Office acting as its representative, shall file its responsive pleading within thirty days of the receipt of the order appointing counsel, or within thirty days of the receipt of the petition, if counsel is retained, or the receipt of the petition, if the resident is proceeding pro se without a request for counsel at the time of the filing.

 (H) In the event that a habeas petition alleging ineffective assistance of counsel claims relating to the resident's commitment or periodic review is filed before the conclusion of the resident's appeal from such proceeding, the Clerk of the Supreme Court shall dismiss the petition without prejudice and without requiring a response from the Department of Mental Health.

 (I) Within thirty days of an assignment, the designated judge shall issue a scheduling order, including a discovery schedule, and shall set a hearing within not more than one hundred eighty days from the filing of the petition. A final report to the Supreme Court shall be submitted within thirty days from the conclusion of the hearing, including findings of fact and conclusions of law supporting the designated judge's recommendation. This does not preclude the designated judge from recommending to the Supreme Court that the petition be denied on the basis of the pleadings without a hearing. The recommendation shall set forth the basis for dismissal.

 (J) Upon receipt by the Supreme Court of the findings and conclusions of the designated judge, the Clerk of the Supreme Court may set forth an appropriate briefing schedule. The clerk may consider expediting the matter to determine whether the writ of habeas corpus should be granted and the appropriate relief. The court may also issue, as appropriate, orders relating to whether intervening and on‑going statutory status review proceedings or appeals from the proceedings are affected in any manner by the habeas corpus actions in its original jurisdiction.

HISTORY: 2023 Act No. 19 (S.146), Section 9, eff May 16, 2023.

**SECTION 44‑48‑120.** Petition for release; hearing ordered by court; examination by qualified expert; burden of proof.

 (A) If the Director of the Department of Mental Health determines that the resident's mental abnormality or personality disorder has so changed that the resident is safe to be at large and, if released, is not likely to commit acts of sexual violence, the director must certify such determination in writing with the specific basis thereof, authorize the resident to petition the court for release, and notify the Attorney General of the certification and authorization. Upon receipt of the certification and authorization, the resident or the Attorney General may file a petition for release, which must be served upon the court and the Attorney General, or on opposing counsel if filed by the Attorney General. The Attorney General must notify the victim of the proceeding.

 (B) The court, upon receipt of the petition for release filed pursuant to subsection (A), must order a hearing within thirty days unless the Attorney General, with notice to the resident, requests an evaluation by a qualified evaluator as to whether the resident's mental abnormality or personality disorder has so changed that the resident is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the resident or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the resident examined by a qualified evaluator chosen by the State. If the Attorney General retains a qualified expert who concludes that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would request an independent qualified evaluator, the indigent petitioner must file and serve upon the Attorney General and the Commission on Indigent Defense a motion requesting payment and costs for the evaluator. If the court determines that the services are necessary and the requested compensation is reasonable, then the court must authorize, in written order prior to any fees or expenses being incurred, the petitioner's attorney to obtain the services of an independent qualified evaluator to perform an evaluation or participate in the trial on the petitioner's behalf and authorize the payment from funds available to the Commission on Indigent Defense. All qualified evaluators are permitted to have reasonable access to the resident for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the resident to comply with any reasonable testing and assessments deemed necessary by a qualified evaluator. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the resident's mental abnormality or personality disorder remains such that the resident is not safe to be at large and, that if released, is likely to commit acts of sexual violence.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2010 Act No. 158, Section 5, eff May 12, 2010; 2023 Act No. 19 (S.146), Section 10, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 10, rewrote the section.

**SECTION 44‑48‑130.** Grounds for denial of petition for release.

 Nothing in this chapter prohibits a resident from filing a petition for release pursuant to this chapter. However, if a resident has previously filed a petition for release without the approval of the Director of the Department of Mental Health, and the court determined either upon review of the petition or following a hearing that the resident's petition was frivolous or that the resident's condition had not changed so that the resident continued to be a threat and, if released, would commit acts of sexual violence, the court must deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the resident had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a resident without the director's approval, the court must, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, must deny the petition without a hearing.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2023 Act No. 19 (S.146), Section 11, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 11, in the first and second sentences, substituted "resident" for "person", in the second sentence, substituted "resident's" for "petitioner's" and "resident" for "petitioner" in two places, and in the third sentence, substituted "resident" for "committed person".

**SECTION 44‑48‑140.** Restricted release of confidential information and records to agencies and Attorney General.

 In order to protect the public, relevant information and records which otherwise are confidential or privileged must be released to the agency with jurisdiction and the Attorney General for the purpose of meeting the notice requirements of Section 44‑48‑40 and determining whether a person is or continues to be a sexually violent predator.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑150.** Evidentiary records; court order to open sealed records.

 Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter must be part of the record, but must be sealed and opened only on order of the court. Nothing in this section prohibits the release of records to the Attorney General and the counsel of record for a person.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2023 Act No. 19 (S.146), Section 12, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 12, added the second sentence.

**SECTION 44‑48‑160.** Registration requirements.

 A resident released from commitment pursuant to this chapter must register pursuant to and comply with the requirements of Article 7, Chapter 3 of Title 23.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004; 2023 Act No. 19 (S.146), Section 13, eff May 16, 2023.

Effect of Amendment

2023 Act No. 19, Section 13, substituted "A resident" for "A person".

**SECTION 44‑48‑170.** Involuntary detention or commitment; constitutional requirements.

 The involuntary detention or commitment of a person pursuant to this chapter must conform to constitutional requirements for care and treatment.

HISTORY: 1998 Act No. 321, Section 1; 2004 Act No. 176, Section 1, eff February 18, 2004.

**SECTION 44‑48‑180.** Priority heading status.

 All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings or trials.

HISTORY: 2023 Act No. 19 (S.146), Section 15, eff May 16, 2023.