~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 3, 2010

**S. 931**

Introduced by Senator L. Martin

S. Printed 3/3/10--S.

Read the first time January 12, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 931) to amend Section 44‑48‑40 of the 1976 Code, relating to the effective date of parole or conditional release of sexually violent predators, to provide that written notice, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety after the enacting words and inserting:

/ SECTION 1. Section 44-48-40(A) and (B) of the 1976 Code are amended to read:

“(A) ~~When~~ 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 ~~one hundred eighty~~ 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 ~~one hundred eighty~~ 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) ~~When~~ 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, the parole or the conditional release must be granted to be effective ~~ninety~~ one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Juvenile Parole Board, or the South Carolina Department of Corrections must immediately send notice of the parole or conditional release 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, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.”

SECTION 2. Section 44-48-80(D) of the 1976 Code is amended to read:

“(D) If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to ~~an appropriate secure facility including, but not limited to,~~ a local or regional detention facility pending 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. The evaluation must be conducted by a qualified expert ~~approved~~ appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions may only be granted for extraordinary circumstances.”

SECTION 3. Section 44-48-90 of the 1976 Code is amended to read:

“Section 44-48-90. (A) ~~Within sixty days after the completion of a hearing held pursuant to Section 44‑48‑80, the~~ 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 such a request is made, the court must schedule a trial before a jury at the next available date in the court of common pleas in the county where the offense was committed.~~ 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 court appointed expert issues the evaluation as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D). If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D). 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 to assist the person.

(C) ~~If a person is subjected to an examination under this chapter, the person~~ Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert ~~of his own choosing~~ to perform ~~the~~ a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the person in obtaining the expert to perform an examination or participate in the trial on the person’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.”

SECTION 4. Section 44-48-100(A) of the 1976 Code is amended to read:

“(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 ~~an appropriate secure facility including, but not limited to,~~ 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.”

SECTION 5. Section 44-48-120 of the 1976 Code is amended to read:

“Section 44-48-120. (A) If the Director of the Department of Mental Health determines that the person’s mental abnormality or personality disorder has so changed that the person 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 person to petition the court for release, and notify the Attorney General of the certification and authorization. The petition must be served upon the court and the Attorney General. The Attorney General must notify the victim of the proceeding.

(B) The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests an examination by a qualified expert as to whether the petitioner’s mental abnormality or personality disorder has so changed that the petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the petitioner or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the petitioner examined by qualified experts chosen by the State. If the Attorney General retains a qualifed 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 like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source. ~~The hearing must be before a jury if requested by either the petitioner or the Attorney General.~~ The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence.”

SECTION 6. SECTION 1 of this act takes effect one hundred eighty days after approval by the Governor. The remaining sections of this act take effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LARRY A. MARTIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department, the Attorney General’s Office, the Department of Probation, Parole and Pardon Services and the Department of Mental Health indicate that enactment of this bill will have no impact on the General Fund of the State, or on federal and/or other funds.

The Department of Corrections and the Department of Juvenile Justice indicates that enactment of this bill will have a minimal impact on the general fund which the agency can absorb at their current level of funding.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 44‑48‑40 OF THE 1976 CODE, RELATING TO THE EFFECTIVE DATE OF PAROLE OR CONDITIONAL RELEASE OF SEXUALLY VIOLENT PREDATORS, TO PROVIDE THAT WRITTEN NOTICE MUST BE GIVEN TWO HUNDRED SEVENTY DAYS RATHER THAN ONE HUNDRED DAYS, AND TO PROVIDE THAT THE PAROLE OR CONDITIONAL RELEASE ORDER DOES NOT TAKE EFFECT FOR ONE HUNDRED EIGHTY DAYS, RATHER THAN NINETY DAYS, AFTER ISSUANCE OF THE ORDER; TO AMEND SECTION 44‑48‑80, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD AFTER PROBABLE CAUSE IS FOUND TO EXIST THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR, TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY PENDING CONCLUSION OF THE PROCEEDINGS IN THIS CHAPTER AND THAT THE COURT MUST DIRECT THE PERSON TO BE TRANSPORTED TO AN APPROPRIATE FACILITY OF THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH; TO AMEND SECTION 44‑48‑90, RELATING TO THE TIME WITHIN WHICH A JURY TRIAL MUST BE REQUESTED AND HELD TO DETERMINE IF A PERSON IS A SEXUALLY VIOLENT PREDATOR, TO PROVIDE THAT A JURY TRIAL MUST BE REQUESTED WITHIN THIRTY DAYS AFTER THE DETERMINATION OF PROBABLE CAUSE UNDER SECTION 44‑48‑80, TO PROVIDE THAT THE TRIAL MUST BE HELD WITHIN NINETY DAYS OF ISSUANCE OF THE COURT APPOINTED EVALUATOR’S OPINION, AND TO PROVIDE THAT UPON RECEIPT OF THE ISSUANCE OF THE OPINION, EITHER PARTY MAY RETAIN HIS OWN EXPERT TO CONDUCT A SUBSEQUENT EVALUATION; TO AMEND SECTION 44‑48‑100, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD UPON A MISTRIAL IN DETERMINING IF THE PERSON IS A SEXUALLY VIOLENT PREDATOR, TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY; AND TO AMEND SECTION 44‑48‑120, RELATING TO PROCEDURES REQUIRED WHEN THE DIRECTOR OF THE DEPARTMENT OF MENTAL HEALTH DETERMINES A PERSON COMMITTED TO THE DEPARTMENT AS A SEXUALLY VIOLENT PREDATOR IS NO LONGER LIKELY TO COMMIT ACTS OF SEXUAL VIOLENCE, TO REQUIRE THE DIRECTOR TO CERTIFY THIS DETERMINATION IN WRITING AND TO NOTIFY THE ATTORNEY GENERAL OF THIS CERTIFICATION AND OF THE PATIENT’S AUTHORIZATION TO PETITION THE COURT FOR RELEASE, TO PROVIDE THAT THE ATTORNEY GENERAL MAY REQUEST AN EXAMINATION BEFORE A HEARING ON THE RELEASE IS HELD, AND TO PROVIDE THAT EITHER PARTY MAY REQUEST THAT THE HEARING BE HELD BEFORE A JURY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑48‑40(A) and (B) of the 1976 Code is amended to read:

“Section 44‑48‑40. (A) ~~When~~ 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 ~~one hundred eighty~~ 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 ~~one hundred eighty~~ 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) ~~When~~ 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, the parole or the conditional release must be granted to be effective ~~ninety~~ one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Juvenile Parole Board, or the South Carolina Department of Corrections must immediately send notice of the parole or conditional release 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, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.”

SECTION 2. Section 44‑48‑80(D) of the 1976 Code is amended to read:

“(D) If the probable cause determination is made, the court must direct that upon the completion of the person’s criminal sentence, the person shall be transferred to ~~an appropriate secure facility including, but not limited to,~~ a local or regional detention facility pending 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. The evaluation must be conducted by a qualified expert ~~approved~~ appointed by the court at the probable cause hearing.”

SECTION 3. Section 44‑48‑90 of the 1976 Code is amended to read:

“Section 44‑48‑90. (A) Within sixty days after the ~~c~~ompletion of a hearing held pursuant to Section 44‑48‑80, the court ~~must conduct a trial to determine whether the person is a sexually violent predator~~ appointed evaluator must complete the evaluation as to whether the person is a sexually violent predator. The court may grant an extension upon request of the court appointed evaluator and a showing of good cause. 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 such a request is made, the court must schedule a trial before a jury at the next available date in the court of common pleas in the county where the offense was committed.~~ If no request is made, the trial must be before a judge in the county where the offense was committed. If either party requests a jury trial, the court must schedule a trial before a jury to determine whether the person is a sexually violent predator within ninety days of when the court appointed evaluator issues an opinion. 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 to assist the person.

(B) ~~If a person is subjected to an examination under this chapter, the person~~ Upon receipt of the opinion issued by the court‑approved evaluator, either party may retain a qualified expert ~~of his own choosing~~ to perform ~~the~~ a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the person in obtaining the expert to perform an examination or participate in the trial on the person’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.”

SECTION 4. Section 44‑48‑100(A) of the 1976 Code is amended to read:

“Section 44‑48‑100. (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~~ shall direct that the person be held at ~~an appropriate secure facility including, but not limited to,~~ 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.”

SECTION 5. Section 44‑48‑120 of the 1976 Code is amended to read:

“Section 44‑48‑120. If the Director of the Department of Mental Health determines that the person’s mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the director ~~must~~ shall certify this determination in writing, including the specific basis for this determination, authorize the person to petition the court for release, and notify the Attorney General of the certification and authorization. The petition must be served upon the court and the Attorney General. The Attorney General must notify the victim of the proceeding. The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests that an examination be conducted by experts or either party requests a hearing before a jury. The Attorney General must represent the State and has the right to have the petitioner examined by experts chosen by the State. The hearing must be before a jury if requested by either the petitioner or the Attorney General. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence.”

SECTION 6. This act takes effect upon approval by the Governor.

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