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CHAPTER 48.

 SEXUALLY VIOLENT PREDATOR ACT

**SECTION 44‑48‑10.** Short title.

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

**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.

**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(1);

(e) criminal sexual conduct with minors in the second degree, as provided in Section 16‑3‑655(2) and (3);

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

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

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

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

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

(k) committing or attempting lewd act upon child under sixteen, as provided in Section 16‑15‑140;

(l) violations of Article 3, Chapter 15 of 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; or

(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.

(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 the person’s propensity to commit acts of sexual violence is of 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.

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

(A) When 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 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 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 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 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.

(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.

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

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 the person satisfies the definition of a sexually violent predator. If it is determined that the person satisfies the definition of a sexually violent predator, 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 expertise in treating sexually violent 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.

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

**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.

**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.

**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, the court must direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert approved by the court at the probable cause hearing.

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

Within sixty days after the completion 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. 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. 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. If a person is subjected to an examination under this chapter, the person may retain a qualified expert of his own choosing to perform the 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 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 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.

(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), the court first shall 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 trials, other than the right not to be tried while incompetent, 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, 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.

**SECTION 44‑48‑110.** Periodic mental examination of committed persons; report; petition for release; hearing; trial to consider release.

A person committed pursuant to this chapter must have an examination of his mental condition performed once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified expert to examine the person, and the expert must have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the person. The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. The court must conduct an annual hearing to review the status of the committed person. The committed person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health must provide the committed person with an annual written notice of the person’s right to petition the court for release over the director’s objection; the notice must contain a waiver of rights. The director must forward the notice and waiver form to the court with the annual report. The committed person has a right to have an attorney represent him at the hearing, but the committed person is not entitled to be present at the hearing. If the court determines that probable cause exists to believe 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 court must schedule a trial on the issue. At the trial, the committed person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person 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 committed person evaluated by qualified experts chosen by the State. The trial must be before a jury if requested by either the person, the Attorney General, or the solicitor. The committed person also has the right to have qualified experts evaluate the person on the person’s behalf, and the court must appoint an expert if the person 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 committed person’s mental abnormality or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

**SECTION 44‑48‑120.** Petition of release; hearing ordered by court.

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 authorize the person to petition the court for release. 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. 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 44‑48‑130.** Grounds for denial of petition for release.

Nothing in this chapter prohibits a person from filing a petition for release pursuant to this chapter. However, if a person 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 petitioner’s petition was frivolous or that the petitioner’s condition had not changed so that the petitioner 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 petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person 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.

**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.

**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.

**SECTION 44‑48‑160.** Registration of persons released from commitment.

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

**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.