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.”

CROSS REFERENCES

Notification to victim of post‑conviction proceedings affecting probation, parole, or release, see Section 16‑3‑1560.

Referral of reports, Vulnerable Adults Investigations Unit, see Section 43‑35‑15.

**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.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

S.C. Jur. Children and Families Section 111, Appeal and Post‑Conviction Review.

S.C. Jur. Children and Families Section 112, Commitment.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Constitutional Law Section 101, Nature of Ex Post Facto Laws.

S.C. Jur. Mental Health Section 22, Overview.

S.C. Jur. Mental Health Section 31, Commitment Hearing.

S.C. Jur. Mental Health Section 32, Appeal and Reexamination.

LAW REVIEW AND JOURNAL COMMENTARIES

Civil Commitment of Sex Offenders: South Carolina’s Sexually Violent Predator Act. 50 S.C. L. Rev. 543 (Winter 1999).

Duty to warn and public notification of the release of sex offenders. 49 S.C. L. Rev. 1131.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The Sexually Violent Predator Act (SVPA) is not intended to be punitive in nature but, rather, sets forth a civil process for the commitment and treatment of sexually violent predators. In re Care and Treatment of Canupp (S.C.App. 2008) 380 S.C. 611, 671 S.E.2d 614, rehearing denied, certiorari denied. Mental Health 456

A person’s dangerous propensities to commit future acts of sexual violence are the focus of the Sexually Violent Predator (SVP) Act. Care and Treatment of Brown v. State (S.C.App. 2007) 372 S.C. 611, 643 S.E.2d 118. Mental Health 454

2. Constitutional issues

Alleged sexually violent predator was not entitled, during involuntary commitment proceedings under the Sexually Violent Predator Act (SVPA), to jury instruction stating that he had a right to decline to take witness stand at trial; commitment proceedings under the SVPA were civil in nature, and there was no constitutional right to decline to take witness stand in a civil proceeding under current law. U.S.C.A. Const.Amend. 5; S.C. Const. art. In re Care and Treatment of Canupp (S.C.App. 2008) 380 S.C. 611, 671 S.E.2d 614, rehearing denied, certiorari denied. Mental Health 462

In permitting State to wait until the end of defendant’s criminal sentence to provide Sexually Violent Predator (SVP) treatment, rather than requiring State to place defendant into SVP program from the beginning of his criminal sentence, SVP Act did not violate constitutional requirement that General Assembly provide for the rehabilitation of inmates. In re Lasure (S.C. 2008) 379 S.C. 144, 666 S.E.2d 228. Mental Health 433(2)

Possible civil commitment of defendant as sexually violent predator was collateral consequence of guilty plea to criminal sexual conduct and other crimes for which counsel had no legal to duty to advise, and thus, counsel’s failure to advise defendant of such possible consequence did not render plea involuntary, as required to support claim of ineffective assistance of counsel; defendant would not be subject to civil commitment until after testing, evaluation, hearing, and separate trial where State had burden of proving defendant’s status as sexually violent predator beyond reasonable doubt. Page v. State (S.C. 2005) 364 S.C. 632, 615 S.E.2d 740. Criminal Law 1920

The Sexually Violent Predator Act does not violate the Double Jeopardy and Ex Post Facto Clauses of the United States Constitution, even though a conviction is a prerequisite to operation of the statute and housing in prison is permissible. In re Allen (S.C. 2002) 351 S.C. 153, 568 S.E.2d 354. Constitutional Law 2820; Double Jeopardy 22; Mental Health 433(2)

Sexually Violent Predator Act did not violate equal protection clause, when analyzed under rational basis test, due to fact that it treated individuals committed under the Act differently than other Department of Mental Health (DMH) patients; the potential danger to the community provided a rational reason why sexually violent predators should be treated differently than other committed patients, and the classification bore a reasonable relation to the legislative purpose of confining sexually violent predators separately from other involuntarily committed individuals for treatment. In re Treatment and Care of Luckabaugh (S.C. 2002) 351 S.C. 122, 568 S.E.2d 338. Constitutional Law 3175; Mental Health 433(2)

Sexually Violent Predator Act does not violate the ex post facto clause because it is not criminal or penal in purpose and nature. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Constitutional Law 2820; Mental Health 433(2)

Sexually Violent Predator Act does not violate the double jeopardy clause. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Double Jeopardy 22

Sex offender failed to preserve for review contention that Sexually Violent Predator Act violated the due process clause, where the issue was not raised to or ruled upon by the trial court. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Mental Health 467

Sex offender had burden on his ex post facto claim to provide the clearest proof that the Sexually Violent Predator Act was so punitive either in purpose or effect as to negate the legislature’s intention that the Act was civil. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Constitutional Law 1007; Constitutional Law 1033

Committee failed to show that Sexually Violent Predator (SVP) Act, on its face, constituted additional criminal punishment, and thus, Act did not violate committee’s double jeopardy or ex post facto rights. U.S.C.A. Const. Art. 1, Sections 10, cl. 1; In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Constitutional Law 2820; Double Jeopardy 22; Mental Health 433(2)

**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.

Library References

Mental Health 452.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 269, 288 to 289, 292 to 299.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 22, Overview.

NOTES OF DECISIONS

In general 1

Instructions 3

Purpose of act 2

1. In general

Trial court’s decision to stop and toll time remaining on defendant’s probation until his release from involuntary civil commitment as a sexually violent predator (SVP) did not convert the civil commitment into a punitive commitment; Sexually Violent Predator (SVP) Act expressly defined the nature of SVP commitment as civil commitment, and commitment pursuant to SVP Act was non‑punitive. State v. Miller (S.C.App. 2011) 393 S.C. 59, 709 S.E.2d 135, rehearing denied, reversed 404 S.C. 29, 744 S.E.2d 532. Mental Health 456; Sentencing and Punishment 1947

To civilly commit person as a sexually violent predator (SVP), the following steps must occur: (1) multidisciplinary team must determine if person meets definition of SVP; (2) case is referred to prosecutor’s review committee; (3) committee determines whether probable cause exists to commit person as SVP; (4) Attorney General files petition in circuit court to request probable cause hearing; (5) trial court determines if there is probably cause to believe person is an SVP; (6) person is transferred to secure facility for evaluation; and (7) trial is conducted at which State must prove beyond a reasonable doubt that person is an SVP. In re Manigo (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, rehearing denied, certiorari granted, affirmed 398 S.C. 149, 728 S.E.2d 32. Mental Health 453

Act providing for civil commitment of persons as sexually violent predators (SVP) is not penal in nature, even though it bestows some of the rights normally associated with criminal prosecutions; act sets forth a civil process for the commitment and treatment of SVPs. In re Manigo (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, rehearing denied, certiorari granted, affirmed 398 S.C. 149, 728 S.E.2d 32. Mental Health 456

2. Purpose of act

Purpose of the requirements in Sexually Violent Predator (SVP) Act is to ensure that involuntary commitment procedures under the Act are only used to control a limited subclass of dangerous persons and not to broadly subject any dangerous person to what may be indefinite terms. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Mental Health 454; Mental Health 465(2)

3. Instructions

In charging jury on Sexually Violent Predator (SVP) Act, trial court was not required to read portion of Act’s statement of intent indicating that Act was directed at “extremely dangerous group of sexually violent predators”; general charge properly gave jury background of issue they were being asked to decide, followed by charge defining terms that state had to prove beyond reasonable doubt, and actual burden on state to show that individual was SVP did not require showing of “extreme danger.” In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Mental Health 462

**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 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.

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.

Library References

Mental Health 454.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

Encyclopedias

14 Am. Jur. Proof of Facts 2d 1, Reliability of Polygraph Examination.

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

42 Am. Jur. Trials 313, Uses, Techniques, and Reliability of Polygraph Testing.

S.C. Jur. Mental Health Section 22, Overview.

S.C. Jur. Mental Health Section 31, Commitment Hearing.

S.C. Jur. Mental Health Section 32, Appeal and Reexamination.

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 7

Constitutional issues 2

Instructions 8

Presumptions and burden of proof 6

Probable cause 5

Review 10

Sexually violent offense 4

Sexually violent predator 3

Sufficiency of evidence 9

1. In general

Purpose of the Sexually Violent Predator Act (SVPA) is to involuntarily commit only a limited subclass of dangerous persons and not to broadly subject any dangerous person to what may be an indefinite term of confinement. In re Thomas S. (S.C. 2013) 402 S.C. 373, 741 S.E.2d 27. Mental Health 454

Purpose of the requirements in Sexually Violent Predator (SVP) Act is to ensure that involuntary commitment procedures under the Act are only used to control a limited subclass of dangerous persons and not to broadly subject any dangerous person to what may be indefinite terms. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Mental Health 454; Mental Health 465(2)

2. Constitutional issues

Classification of the offense of committing or attempting a lewd act upon a child under 16 years of age as a non‑violent offense in the criminal code but a violent offense for purposes of the South Carolina Sexually Violent Predator (SVP) Act does not violate constitutional provisions on double jeopardy, due process, or separation of powers. Hamm v. State (S.C. 2013) 403 S.C. 461, 744 S.E.2d 503. Constitutional Law 2340; Constitutional Law 4343; Double Jeopardy 30; Mental Health 433(2)

Sexually Violent Predator Act did not violate substantive due process principles when analyzed under strict scrutiny test, as Act was narrowly tailored to serve a compelling state interest since it allowed involuntary commitment for mental health care only after a finding of dangerousness coupled with some additional factor, such as mental illness or mental abnormality. In re Treatment and Care of Luckabaugh (S.C. 2002) 351 S.C. 122, 568 S.E.2d 338. Constitutional Law 4344; Mental Health 433(2)

3. Sexually violent predator

Evidence was insufficient to establish sex offender had a present risk of reoffending, as required to qualify sex offender as a sexually violent predator; no expert testified that sex offender had a present risk of reoffending if not confined. In re Taft (S.C. 2015) 413 S.C. 16, 774 S.E.2d 462, rehearing denied. Mental Health 460(2)

The Supreme Court would decline to apply the rule of lenity in deciding whether Sexually Violent Predator Act (SVPA) required a sex offender to be presently confined for a sexually violent offense in order to be subject to the sexually violent predator (SVP) evaluation process; definitional and notice provisions of SVPA were clear and unambiguous on their face in not requiring present confinement for a sexually violent offense in order for that process to commence. In re Manigo (S.C. 2012) 398 S.C. 149, 728 S.E.2d 32. Mental Health 454

Sexually Violent Predator Act (SVPA) does not require a person to be presently confined for a sexually violent offense to be subject to the sexually violent predator (SVP) evaluation process; definition of SVP refers to someone who “has been” convicted of a sexually violent offense, and another provision of SVPA requires notice to certain persons prior to release from total confinement of a person who “has been” convicted of a sexually violent offense. In re Manigo (S.C. 2012) 398 S.C. 149, 728 S.E.2d 32. Mental Health 454

Consideration of a person’s past criminal history is directly relevant to establishing whether a person has been convicted of a sexually violent offense, which in turn bears directly on whether one suffers from a mental abnormality supporting determination that one is a sexually violent predator (SVP). Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 454

Physical violence is not a prerequisite to a determination that an offender is a sexually violent predator (SVP). Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 454

4. Sexually violent offense

Evidentiary hearing was not required to classify defendant’s conviction for indecent exposure as sexually violent offense, within meaning of Sexually Violent Predator Act, where classification was based on circumstances of case, defendant’s status as registered sex offender, his sworn admission to facts that formed basis of guilty plea to offense, his requests for help, and his prior conviction for lewd act on minor. State v. Wessinger (S.C. 2014) 408 S.C. 416, 759 S.E.2d 405. Mental Health 462

The Sexually Violent Predator Act vests the trial/plea judge with the discretion to make a finding that an offense should be classified as sexually violent, even in the absence of a request by the State. State v. Wessinger (S.C. 2014) 408 S.C. 416, 759 S.E.2d 405. Mental Health 462

5. Probable cause

The positive potential for rehabilitation does not negate probable cause to believe offender is a sexually violent predator supporting a mental evaluation and a hearing on the merits. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 461; Mental Health 462

Probable cause supported finding that offender was a sexually violent predator (SVP); offender had been involved in three known offenses of a sexual nature involving young girls, offender committed some acts even while on probation for similar conduct, one victim alleged force was used when defendant assaulted her, offender was aware his conduct in having sexual intercourse with girls he knew to be 13‑years‑old was inappropriate, and offender had not completed his treatment program while at the Department of Corrections. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 454

In the context of probable cause to believe someone to be a sexually violent predator (SVP), probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator; probable cause does not demand any showing that such a belief be correct or more likely true than false. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 460(1)

State’s inability to produce mental health information at probable cause hearing in proceedings under Sexually Violent Predator (SVP) Act does not preclude a finding of probable cause to believe offender is a sexually violent predator. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 455

6. Presumptions and burden of proof

There is no burden of proof or persuasion placed upon either party in deciding whether an offense should be classified as a “sexually violent offense” under the Sexually Violent Predator Act. State v. Wessinger (S.C. 2014) 408 S.C. 416, 759 S.E.2d 405. Mental Health 460(1)

7. Admissibility of evidence

Licensed social worker, a lay witness, was improperly permitted to offer expert opinion testimony in proceeding to determine whether individual was sexually violent predator (SVP); question whether sex offenders entered offense cycle and therefore reoffended if exposed to certain triggers was not matter within purview of lay witness, social worker was not qualified to identify individual’s purported triggers or define them, and social worker did not observe individual when he abused his victim, and did not have personal knowledge of reasons he committed that abuse. In re Thomas S. (S.C. 2013) 402 S.C. 373, 741 S.E.2d 27. Mental Health 460(2)

8. Instructions

Even if alleged sexually violent predator, involuntarily committed under Sexually Violent Predator Act (SVPA), was entitled to jury instruction stating that he had a right to decline to take witness stand at trial, the omission of such an instruction was not prejudicial, in light of overwhelming evidence that alleged predator met statutory definition of a sexually violent predator; evidence presented to jury showed that predator pled guilty to sexually assaulting a seven‑year‑old girl and conditionally pled guilty to sexually assaulting a child under the age of sixteen, and state’s psychiatric expert testified that predator met criteria for diagnosis of pedophilia and alcohol dependence, did not fully accept responsibility for his actions, presented a significant likelihood of committing future acts of sexual violence, and that, as a consequence, predator needed sex offender treatment. In re Care and Treatment of Canupp (S.C.App. 2008) 380 S.C. 611, 671 S.E.2d 614, rehearing denied, certiorari denied. Mental Health 467

When instructing jury in sexually violent predator (SVP) proceedings, trial court did not place “undue stress” on definitions of “mental abnormality” and “likely to engage in acts of sexual violence,” at expense of portion of statute pertaining to confinement in secure facility for long‑term control, care and treatment; judge simply charged statute, and where specific term had specific definition, charged that definition. In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Mental Health 462

9. Sufficiency of evidence

Sufficient probable cause existed to establish that sex offender was a sexually violent predator, as defined by the Sexually Violent Predator Act; offender’s prior convictions for second and third degree criminal sexual conduct were qualifying offenses under the Act, and offender’s prior convictions and unadjudicated assaults against other nonconsenting female victims established a reasonable basis to believe that offender suffered from some type of mental abnormality or personality disorder. White v. State (S.C.App. 2007) 375 S.C. 1, 649 S.E.2d 172, rehearing denied, certiorari denied. Mental Health 454

Sufficient probable cause existed to find that sex offender met definition of sexually violent predator, as defined by the Sexually Violent Predator Act, where offender had been convicted of a sexually violent offense, i.e., lewd act upon a minor. Care and Treatment of Beaver v. State (S.C. 2007) 372 S.C. 272, 642 S.E.2d 578. Mental Health 455

State presented sufficient evidence that sex offender suffered from a mental abnormality or personality disorder that made him likely to engage in acts of sexual violence if not confined in a secure facility for long‑term control, care, and treatment, as required to civilly commit offender as a sexually violent predator pursuant to Sexually Violent Predator Act; evidence was introduced that showed that offender suffered from pedophilia, offender had pled guilty to aggravated sexual battery and incest arising out of the molestation of one of offender’s natural daughters, and a few years after offender’s release from prison, he performed a lewd act upon a ten‑year‑old girl. Care and Treatment of Beaver v. State (S.C. 2007) 372 S.C. 272, 642 S.E.2d 578. Mental Health 454

Testimony by psychiatrist in sexually violent predator (SVP) commitment proceeding, that she had diagnosed juvenile sex offender with pedophilia and that offender met statutory definition of an SVP, was adequate evidence of offender’s present dangerousness. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2712

Evidence supported finding of a mental abnormality or disorder in sexually violent predator (SVP) commitment proceeding involving juvenile sex offender, even if certain instances of sexual misconduct did not support diagnosis of pedophilia under Diagnostic and Statistical Manual of Mental Disorders (DSM‑IV) either because offender was under 16 years old at the time or was not five years older than alleged victims, where psychiatrist who made diagnosis testified that offender reported “recurring urges” since turning 16 and that diagnosis was based on offender’s present mental state. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2676

Evidence was sufficient to support finding that sex offender was a sexually violent predator, even though offender passed penile plethysmography (PPG) test measuring his sexual arousal to children; doctor testified that offender suffered from pedophilia, frotteurism, and anxiety disorder, that pedophilia was a lifelong illness, and that offender had the propensity to commit future acts on children because of the illness. In re Care and Treatment of Kennedy (S.C.App. 2003) 353 S.C. 394, 578 S.E.2d 27, rehearing denied. Mental Health 460(2)

Proof that sex offender suffered from pedophilia served as inherent evidence that offender suffered from an ability to control his behavior, and thus trial court was not required to make a separate and specific lack of control determination. In re Care and Treatment of Kennedy (S.C.App. 2003) 353 S.C. 394, 578 S.E.2d 27, rehearing denied. Mental Health 454

Evidence supported determination that sex offender was a sexually violent predator; fact that offender was convicted of second degree criminal sexual conduct with a minor established requirement of a conviction for a sexually violent offense, and requirement of a mental abnormality or personality disorder making offender likely to engage in acts of sexual violence was established by psychiatrist’s testimony that offender suffered from sadism and paraphilia and that his propensity to commit sexually violent acts was a threat to society if he was not confined and treated. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Mental Health 454

10. Review

Erroneous admission of extensive opinion testimony of licensed social worker, a lay witness, mandated reversal in proceeding to determine whether individual was sexually violent predator (SVP); issue before jury was whether individual was likely to reoffend, and sole expert in case testified he was not, and only evidence in record of individual’s propensity to commit future acts of sexual violence was that of social worker, who was improperly allowed to give her opinion despite fact state explicitly called her as a non‑expert. In re Thomas S. (S.C. 2013) 402 S.C. 373, 741 S.E.2d 27. Mental Health 467

On review, the appellate court will not disturb the hearing court’s finding on probable cause to believe an offender is a sexually violent predator (SVP), unless found to be without evidence that reasonably supports the hearing court’s finding. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 467

**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, the parole or the conditional release must be granted to be effective one hundred eighty days after the date of the order of parole or conditional release. 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 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.

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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 466.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

S.C. Jur. Mental Health Section 22, Overview.

S.C. Jur. Mental Health Section 31, Commitment Hearing.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Evaluation process 3

Review 4

1. In general

Act providing for civil commitment of person as sexually violent predator (SVP) does not require person to be currently serving a sentence for a sexually violent offense; act defines an SVP in past tense terms of person who “has” been convicted of a sexually violent offense. In re Manigo (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, rehearing denied, certiorari granted, affirmed 398 S.C. 149, 728 S.E.2d 32. Mental Health 454

2. Constitutional issues

Sexually Violent Predator Act does not violate a prisoner’s right to substantive due process because it allows state to forcibly detain a prisoner beyond the underlying sentence pending a commitment hearing. In re Treatment and Care of Luckabaugh (S.C. 2002) 351 S.C. 122, 568 S.E.2d 338. Constitutional Law 4344; Mental Health 433(2)

3. Evaluation process

Sexually Violent Predator Act (SVPA) does not require a person to be presently confined for a sexually violent offense to be subject to the sexually violent predator (SVP) evaluation process; definition of SVP refers to someone who “has been” convicted of a sexually violent offense, and another provision of SVPA requires notice to certain persons prior to release from total confinement of a person who “has been” convicted of a sexually violent offense. In re Manigo (S.C. 2012) 398 S.C. 149, 728 S.E.2d 32. Mental Health 454

The Supreme Court would decline to apply the rule of lenity in deciding whether Sexually Violent Predator Act (SVPA) required a sex offender to be presently confined for a sexually violent offense in order to be subject to the sexually violent predator (SVP) evaluation process; definitional and notice provisions of SVPA were clear and unambiguous on their face in not requiring present confinement for a sexually violent offense in order for that process to commence. In re Manigo (S.C. 2012) 398 S.C. 149, 728 S.E.2d 32. Mental Health 454

4. Review

Sex offender’s appeal in civil commitment proceeding under the Sexually Violent Predator Act (SVPA) was from a final judgment, despite offender’s erroneous references to the denial of his summary judgment motion, and, therefore, the Supreme Court would address the legal question raised in sex offender’s certiorari petition that followed affirmance by the Court of Appeals of the commitment order, i.e., whether he was exempt from SVPA evaluation procedure simply because his most recent offense, indecent exposure, was not explicitly designated as sexually violent; errors claimed by offender on appeal also included two evidentiary challenges from the trial. In re Manigo (S.C. 2012) 398 S.C. 149, 728 S.E.2d 32. Certiorari 64(1)

**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.

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

Library References

Mental Health 452.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 269, 288 to 289, 292 to 299.

NOTES OF DECISIONS

In general 1

1. In general

A person’s “criminal offense record,” for purposes of supporting a finding of probable cause to proceed under Sexually Violent Predator (SVP) Act, includes convictions for criminal sexual offenses as well as evidence of criminal sexual offenses not resulting in convictions. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 455

**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.

Library References

Mental Health 452.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 269, 288 to 289, 292 to 299.

**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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 457.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

NOTES OF DECISIONS

In general 1

Rehabilitation 2

Review 4

Sufficiency of evidence 3

1. In general

Former state prison inmate who was no longer serving a sentence for a criminal conviction but was being detained under state’s Sexually Violent Predator Act (SVPA) was under “civil detention” rather than “criminal detention,” and thus, was not a “prisoner” for purposes of the Prison Litigation Reform Act (PLRA), and therefore his complaint asserting claims for damages under Sections 1983 was not subject to the PLRA’s screening requirements for complaints in civil actions filed by prisoners. Michau v. Charleston County, S.C. (C.A.4 (S.C.) 2006) 434 F.3d 725, certiorari denied 126 S.Ct. 2936, 548 U.S. 910, 165 L.Ed.2d 961. Civil Rights 1395(7)

State’s inability to produce mental health information at probable cause hearing in proceedings under Sexually Violent Predator (SVP) Act does not preclude a finding of probable cause to believe offender is a sexually violent predator. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 455

In the context of probable cause to believe someone to be a sexually violent predator (SVP), probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator; probable cause does not demand any showing that such a belief be correct or more likely true than false. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 460(1)

2. Rehabilitation

The positive potential for rehabilitation does not negate probable cause to believe offender is a sexually violent predator supporting a mental evaluation and a hearing on the merits. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 461; Mental Health 462

3. Sufficiency of evidence

Probable cause supported finding that offender was a sexually violent predator (SVP); offender had been involved in three known offenses of a sexual nature involving young girls, offender committed some acts even while on probation for similar conduct, one victim alleged force was used when defendant assaulted her, offender was aware his conduct in having sexual intercourse with girls he knew to be 13‑years‑old was inappropriate, and offender had not completed his treatment program while at the Department of Corrections. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 454

4. Review

On review, the appellate court will not disturb the hearing court’s finding on probable cause to believe an offender is a sexually violent predator (SVP), unless found to be without evidence that reasonably supports the hearing court’s finding. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 467

**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 upon completion of the criminal sentence, the person must be transferred 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 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 only may be granted for extraordinary circumstances.

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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 462.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289, 295.

LAW REVIEW AND JOURNAL COMMENTARIES

Bringing “equal justice under law” to South Carolina: Addressing the civil justice gap and confronting the legal ultimatum. Whitney Kamerzel, 68 S.C. L. Rev. 861 (Spring 2017).

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

NOTES OF DECISIONS

In general 1

Review 3

Sufficiency of evidence 2

1. In general

State’s inability to produce mental health information at probable cause hearing in proceedings under Sexually Violent Predator (SVP) Act does not preclude a finding of probable cause to believe offender is a sexually violent predator. Care and Treatment of Chandler v. State (S.C. 2009) 382 S.C. 250, 676 S.E.2d 676. Mental Health 455

Evidence of sex offender’s prior criminal sexual offenses not resulting in convictions were sufficiently relevant to be admissible at hearing to determine whether probable cause exists to commit sex offender as a sexually violent predator pursuant to the Sexually Violent Predator Act. White v. State (S.C.App. 2007) 375 S.C. 1, 649 S.E.2d 172, rehearing denied, certiorari denied. Mental Health 460(1)

Offenses that a circuit court can permissibly consider in making determination of whether probable cause exists to commit sex offender as a sexually violent predator pursuant to the Sexually Violent Predator Act include both convictions and offenses not resulting in convictions. White v. State (S.C.App. 2007) 375 S.C. 1, 649 S.E.2d 172, rehearing denied, certiorari denied. Mental Health 454

At hearing to determine whether probable cause exists to commit sex offender as a sexually violent predator pursuant to the Sexually Violent Predator Act, the circuit court can consider any prior relevant offenses, which may be contained in the state’s petition. White v. State (S.C.App. 2007) 375 S.C. 1, 649 S.E.2d 172, rehearing denied, certiorari denied. Mental Health 454

In the context of probable cause to believe someone to be a sexually violent predator (SVP), probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person meets the definition of a sexually violent predator. Care and Treatment of Brown v. State (S.C.App. 2007) 372 S.C. 611, 643 S.E.2d 118. Mental Health 455

2. Sufficiency of evidence

State had established probable cause to believe defendant convicted of various offenses, including eavesdropping/peeping tom, voyeurism, and stalking, was a sexually violent predator (SVP); defendant most probably suffered from mental abnormality or personality disorder, defendant’s eavesdropping/peeping tom amounted to a sexually violent offense, repetitious nature of defendant’s behavior conformed to definition of predator, and chronology of offenses demonstrated pattern, no sign of rehabilitation or remorse, and showed increasingly violent aspects of deviant behavior. Care and Treatment of Brown v. State (S.C.App. 2007) 372 S.C. 611, 643 S.E.2d 118. Mental Health 455

State presented sufficient evidence that sex offender suffered from a mental abnormality or personality disorder that made him likely to engage in acts of sexual violence if not confined in a secure facility for long‑term control, care, and treatment, as required to civilly commit offender as a sexually violent predator pursuant to Sexually Violent Predator Act; evidence was introduced that showed that offender suffered from pedophilia, offender had pled guilty to aggravated sexual battery and incest arising out of the molestation of one of offender’s natural daughters, and a few years after offender’s release from prison, he performed a lewd act upon a ten‑year‑old girl. Care and Treatment of Beaver v. State (S.C. 2007) 372 S.C. 272, 642 S.E.2d 578. Mental Health 454

3. Review

An appellate court will not disturb the circuit court’s finding on whether probable cause existed to commit sex offender as a sexually violent predatory pursuant to the Sexually Violent Predator Act unless found to be without evidence that reasonably supports the circuit court’s finding. White v. State (S.C.App. 2007) 375 S.C. 1, 649 S.E.2d 172, rehearing denied, certiorari denied. Mental Health 467

**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 court appointed expert issues the evaluation 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. 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), 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 to assist the person.

 (C) 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 to perform 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.

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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 462.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289, 295.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

S.C. Jur. Mental Health Section 22, Overview.

S.C. Jur. Mental Health Section 31, Commitment Hearing.

S.C. Jur. Mental Health Section 32, Appeal and Reexamination.

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 5

Arguments of counsel 6

Constitutional issues 2

Habeas corpus 9

Harmless error 7

Payment of expenses 4

Review 10

Sufficiency of evidence 8

Time for trial 3

1. In general

Once a motion to dismiss is granted, when state fails to timely conduct a civil commitment trial within the time provisions mandated by the Sexually Violent Predator Act (SVPA), inmate may be released from custody while state re‑files with circuit court petition that precipitates civil commitment trial, provided that he has completed his sentence as determined by the Department of Corrections; release of inmate ensures individuals are not arbitrarily held beyond their release dates and serves as an incentive to state to comply with statutorily‑mandated time provisions of the SVPA. In re Miller (S.C. 2011) 393 S.C. 248, 713 S.E.2d 253, certiorari denied, certiorari denied 132 S.Ct. 774, 565 U.S. 1066, 181 L.Ed.2d 496. Mental Health 462

2. Constitutional issues

Although persons committed under the Sexually Violent Predator Act (SVP Act) have no Sixth or Fourteenth Amendment right to counsel, as do the accused in criminal proceedings, they do have a statutory right to counsel. In re McCoy (S.C. 2004) 360 S.C. 425, 602 S.E.2d 58. Mental Health 463

Committee’s only right to counsel in proceedings under Sexually Violent Predator (SVP) Act was his right to assistance of appointed counsel, as he failed to show that such proceedings were criminal in nature; thus, lack of funds to depose state’s expert did not violate his sixth amendment right to effective assistance of counsel, as sixth amendment was not implicated. In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Mental Health 463

3. Time for trial

Circuit court did not abuse its discretion in denying offender’s motion to dismiss sexually violent predator (SVP) trial on ground that trial was not held within the 60‑day statutory limit; state adhered to time limits of Sexually Violent Predator Act (SVPA) until civil commitment trial, state filed motion for continuance of trial prior to expiration of 60‑day time limit, and state established “good cause” for continuance since there was only one court‑appointed psychiatrist employed to handle all SVP evaluations at that time. In re Miller (S.C. 2011) 393 S.C. 248, 713 S.E.2d 253, certiorari denied, certiorari denied 132 S.Ct. 774, 565 U.S. 1066, 181 L.Ed.2d 496. Mental Health 462

Grant of inmate’s motion to dismiss, when state fails to timely conduct a civil commitment trial within the time provisions mandated by the Sexually Violent Predator Act (SVPA), should be without prejudice to state. In re Miller (S.C. 2011) 393 S.C. 248, 713 S.E.2d 253, certiorari denied, certiorari denied 132 S.Ct. 774, 565 U.S. 1066, 181 L.Ed.2d 496. Mental Health 467

State demonstrated that sex offender’s sexually violent predator (SVP) trial could not be held within 60 days of the probable cause hearing, as required by Sexually Violent Predator Act, and that there was good cause for delay of the trial, thereby weighing in favor of granting State’s motion for continuance of the SVP trial; offender’s change in counsel had required postponement of the initial probable cause hearing, court‑appointed evaluator could not perform a complete evaluation of offender within the statutory time frame, and a thorough evaluation was in the best interest of the public as well as offender. In re Care and Treatment of Miller (S.C.App. 2009) 385 S.C. 539, 685 S.E.2d 619, affirmed 393 S.C. 248, 713 S.E.2d 253, certiorari denied, certiorari denied 132 S.Ct. 774, 565 U.S. 1066, 181 L.Ed.2d 496. Mental Health 462

Sex offender was not substantially prejudiced by the grant of State’s motion for continuance of his sexually violent predator (SVP) trial, beyond the 60‑day statutory period for holding the trial, and thus the continuance was authorized under the Sexually Violent Predator Act, though offender was incarcerated past his release date; trial court set the trial for two weeks after the 60‑day period expired, offender thereafter requested to have the case continued to have his own evaluation completed, and offender was thus able to prepare a defense and complete an independent psychiatric examination. In re Care and Treatment of Miller (S.C.App. 2009) 385 S.C. 539, 685 S.E.2d 619, affirmed 393 S.C. 248, 713 S.E.2d 253, certiorari denied, certiorari denied 132 S.Ct. 774, 565 U.S. 1066, 181 L.Ed.2d 496. Mental Health 462

4. Payment of expenses

Sexually Violent Predator Act did not constitute continuing appropriation that authorized state to pay expert witness fees for indigents from general fund, even though it provided that circuit court shall approve payment of expert fees for indigent person’s defense in action pursuant to Act, where Act merely gave circuit court authority to review expert fees and approve them if they were reasonable, but was silent as to source of funding; Act was not continuing appropriation statute because it did not contemplate that specific amount of money would be spent annually until statute was repealed. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Mental Health 461

Appropriations Act authorizes payment of expert witness fees by Commission on Indigent Defense in civil commitment cases in which state seeks to commit a sexually violent offender, through reimbursement of private attorneys, since such reimbursement is not limited by Act to attorney fees, but applies broadly, and thus the appropriation may be used to reimburse court‑appointed private attorneys for experts they have hired to defend an action brought under the Sexually Violent Predator Act. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Mental Health 461

Trial court order requiring Attorney General’s office to pay fees of psychiatric expert hired by alleged sexually violent predator in civil commitment proceedings was warranted, where Appropriations Act authorizing reimbursement from Office of Indigent Defense for such expenses did not apply to case that was brought prior to Act, and Office of Indigent Defense indicated that it did not have money to pay for expert’s fees because of severe financial crisis. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Mental Health 461

5. Admissibility of evidence

Probative value of questioning sex offender about his retention of a non‑testifying psychiatric expert was substantially outweighed by the danger of unfair prejudice in proceeding to civilly commit offender as a sexually violent predator. Way v. State (S.C. 2014) 410 S.C. 377, 764 S.E.2d 701, rehearing denied. Mental Health 460(2)

Testimony concerning defendant’s prior sexual offenses, which did not result in criminal convictions, and his prior murder conviction, was relevant and admissible, in proceeding to civilly commit sex offender under the Sexually Violent Predator Act; expert relied on the prior offenses when evaluating sex offender’s need for and likelihood of success in treatment as well as his ability to control his behavior in the future. Care and Treatment of Ettel v. State (S.C.App. 2008) 377 S.C. 558, 660 S.E.2d 285. Mental Health 460(2)

Log book from treatment center where juvenile sex offender had resided, described by clinical director as containing summaries of “critical incidents” involving offender that staff members deemed to be “significant” and to warrant follow‑up by clinical staff, was not admissible under business records exception to hearsay rule in commitment proceeding under Sexually Violent Predator Act; log was replete with subjective opinions and judgments and was also unsigned. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2712

In commitment proceedings under the Sexually Violent Predator Act, motion that sex offender filed for ruling on legal age of sexual consent was relevant because psychiatrist used it in evaluating offender’s need for and probability of success in treatment. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Mental Health 460(1)

In commitment proceedings under the Sexually Violent Predator Act, probative value of motion that sex offender filed for ruling on legal age of sexual consent, which psychiatrist used to evaluate offender’s treatment needs, was not outweighed by the prejudicial effect of such evidence. State v. Gaster (S.C. 2002) 349 S.C. 545, 564 S.E.2d 87. Mental Health 460(1)

6. Arguments of counsel

State should not have been allowed to argue in closing argument that jury could infer that testimony of psychiatric expert, who sex offender retained, would have been adverse to offender in proceeding to civilly commit offender as a sexually violent predator; invocation of the missing witness rule was limited to fact witnesses, and it should not have been invoked as to psychiatric or similar medical expert opinion witnesses. Way v. State (S.C. 2014) 410 S.C. 377, 764 S.E.2d 701, rehearing denied. Mental Health 462

Error in allowing State to argue in closing argument that jury could infer that testimony of psychiatric expert would have been adverse to sex offender was harmless in proceeding to civilly commit offender as a sexually violent predator, where all of the information regarding psychiatrist’s role as defendant’s expert was confined to the colloquy among the parties and the circuit court, and offender was not prevented from rebutting the adverse inference if he deemed it necessary. Way v. State (S.C. 2014) 410 S.C. 377, 764 S.E.2d 701, rehearing denied. Mental Health 467

7. Harmless error

Error in application of the missing witness rule to psychiatrist who examined sex offender was harmless beyond a reasonable doubt in civil commitment proceeding brought against offender on the basis that he was a sexually violent predator, where State did not elicit any details about the evaluation on cross‑examination, other than the name of the examiner, and the date it was performed, defense counsel strenuously rebutted the adverse inference by arguing to the jury in his closing that the State could have called the expert if it believed his testimony would be helpful to the State, and the State set forth an abundance of evidence as to offender’s mental abnormalities of pedophilia and anti‑social disorder, and his risk of reoffending. In re Gonzalez (S.C. 2014) 409 S.C. 621, 763 S.E.2d 210. Mental Health 467

Erroneous admission, in commitment proceeding under Sexually Violent Predator (SVP) Act, of log book of “critical incidents” involving juvenile sex offender that had occurred during his residency at treatment center was not harmless; psychiatrist who diagnosed offender with pedophilia specifically commented on log during her testimony, state used log to impeach opinion of offender’s expert, and while trial court orally stated it would not consider that document, its written order did not state that it disregarded the log. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2939

8. Sufficiency of evidence

State presented sufficient evidence that sex offender suffered from a mental abnormality or personality disorder that made him likely to engage in acts of sexual violence if not confined in a secure facility for long‑term control, care, and treatment, as required to civilly commit offender as a sexually violent predator pursuant to Sexually Violent Predator Act; evidence was introduced that showed that offender suffered from pedophilia, offender had pled guilty to aggravated sexual battery and incest arising out of the molestation of one of offender’s natural daughters, and a few years after offender’s release from prison, he performed a lewd act upon a ten‑year‑old girl. Care and Treatment of Beaver v. State (S.C. 2007) 372 S.C. 272, 642 S.E.2d 578. Mental Health 454

9. Habeas corpus

Offender, who challenged his civil commitment under the South Carolina Sexually Violent Predator (SVP) Act based on his contention that plea judge and plea counsel were ineffective for failing to advise him that pleading guilty to certain sex crimes would subject him to the SVP Act and its potential implications, such as civil commitment, could not obtain habeas corpus relief under Padilla, in which the United States Supreme Court held that defense counsel was constitutionally required to advise a defendant of the deportation consequences of a guilty plea; commitment pursuant to the SVP Act did not automatically flow from a conviction but, rather, was certain only after an evaluation at a civil proceeding, the Supreme Court’s rationale under Padilla did not extend to an offender’s civil commitment under the SVP Act, and Padilla did not apply retroactively. Hamm v. State (S.C. 2013) 403 S.C. 461, 744 S.E.2d 503. Courts 100(1); Habeas Corpus 475.1; Habeas Corpus 486(3)

10. Review

Supreme Court would adopt Anders‑type procedure for alleged no‑merit Sexually Violent Predator (SVP) involuntary commitment appeals; appellate counsel was to submit a brief outlining all issues of arguable merit, a copy of the record on appeal, and a motion to be relieved as counsel. In re McCoy (S.C. 2004) 360 S.C. 425, 602 S.E.2d 58. Mental Health 467

**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), 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.

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.

CROSS REFERENCES

Safekeeping of persons transferred to the Department of Corrections pursuant to interagency agreements, see Section 24‑3‑85.

Library References

Mental Health 460, 465.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 269, 288 to 289, 294, 297 to 298.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 4

Constitutional issues 2

Harmless error 5

Justiciability 3

Review 7

Sufficiency of evidence 6

1. In general

Trial court lacked authority to toll defendant’s probation for criminal offenses until defendant was released from his involuntary civil commitment as a sexually violent predator (SVP), even though the state argued that defendant was receiving mental‑health treatment in the SVP program and was therefore unavailable for community supervision; the state did not allege that defendant violated a condition of his probation, the SVP statutes did not authorize such tolling, and any decision to allow tolling of probations of individuals committed to the SVP program was for the legislature, given that probation was governed by statute. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 1947

2. Constitutional issues

If conditions of Sexually Violent Predator (SVP) Act committee’s confinement showed that he was being unconstitutionally punished as criminal, his remedy would be by writ of habeas corpus. In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Habeas Corpus 537.1

3. Justiciability

Appeal of Department of Mental Health and State from order of trial court transferring inmate, who had been committed to Department of Mental Health Behavioral Disorders Treatment Program (BDTP) after adjudication as a Sexually Violent Predator (SVP), to a private treatment facility was moot; inmate had successfully completed SVP Program and been released from confinement with consent of Department, and any decision by reviewing court concerning validity of transfer order would have no practical effect on inmate’s placement since he was no longer in Department’s custody. McClam v. State (S.C.App. 2009) 386 S.C. 49, 686 S.E.2d 203. Mental Health 467

Sexually Violent Predator (SVP) Act committee’s release during his appeal rendered moot his claim that conditions of his confinement showed that he was being unconstitutionally punished as criminal. In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Mental Health 467

4. Admissibility of evidence

Log book from treatment center where juvenile sex offender had resided, described by clinical director as containing summaries of “critical incidents” involving offender that staff members deemed to be “significant” and to warrant follow‑up by clinical staff, was not admissible under business records exception to hearsay rule in commitment proceeding under Sexually Violent Predator Act; log was replete with subjective opinions and judgments and was also unsigned. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2712

Probative value of details underlying defendant’s assault and battery of a high and aggravated nature (ABHAN) and criminal sexual conduct (CSC) convictions, as presented in indictments, outweighed danger of undue prejudice, for purposes of proceeding seeking to commit defendant to long term control, care, and treatment under Sexually Violent Predator Act. In re Care and Treatment of Corley (S.C. 2003) 353 S.C. 202, 577 S.E.2d 451. Mental Health 460(1)

Indictments outlining details underlying defendant’s assault and battery of a high and aggravated nature (ABHAN) and criminal sexual conduct (CSC) convictions were relevant to issue of whether defendant was likely to engage in acts of sexual violence again, for purposes of Sexually Violent Predator Act, and thus were admissible, in proceeding to commit defendant to long term control, care, and treatment under Act; State’s expert testified that it was important if past crimes were similar in nature, as where there was similarity, it evinced a pattern of behavior which indicated a person would be at an increased risk to commit future offenses, and expert further stated that defendant’s two victims were similar age, race, and gender. In re Care and Treatment of Corley (S.C. 2003) 353 S.C. 202, 577 S.E.2d 451. Mental Health 460(1)

5. Harmless error

Erroneous admission, in commitment proceeding under Sexually Violent Predator (SVP) Act, of log book of “critical incidents” involving juvenile sex offender that had occurred during his residency at treatment center was not harmless; psychiatrist who diagnosed offender with pedophilia specifically commented on log during her testimony, state used log to impeach opinion of offender’s expert, and while trial court orally stated it would not consider that document, its written order did not state that it disregarded the log. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2939

6. Sufficiency of evidence

Testimony by psychiatrist in sexually violent predator (SVP) commitment proceeding, that she had diagnosed juvenile sex offender with pedophilia and that offender met statutory definition of an SVP, was adequate evidence of offender’s present dangerousness. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2712

Evidence supported finding of a mental abnormality or disorder in sexually violent predator (SVP) commitment proceeding involving juvenile sex offender, even if certain instances of sexual misconduct did not support diagnosis of pedophilia under Diagnostic and Statistical Manual of Mental Disorders (DSM‑IV) either because offender was under 16 years old at the time or was not five years older than alleged victims, where psychiatrist who made diagnosis testified that offender reported “recurring urges” since turning 16 and that diagnosis was based on offender’s present mental state. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2676

7. Review

In an appeal regarding sufficiency of the evidence to support commitment order under Sexually Violent Predator (SVP) Act, appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling; in other words, appellate court is concerned with the existence of evidence, not its weight. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Mental Health 467

**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.

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

Library References

Mental Health 466.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

ALR Library

78 ALR 6th 417 , Discharge from Commitment and Supervised Release of Civilly Committed Sex Offender Under State Law.

NOTES OF DECISIONS

In general 1

Justiciability 2

Review 3

1. In general

Evidence failed to establish probable cause to believe sex offender’s mental abnormality or personality disorder had so changed that he was safe to be released from his commitment as sexually violent predator under Sexually Violent Predator Act; although offender made progress, he received at least five major disciplinary citations in year prior to review, some of which involved manipulating to use telephone to make sexually inappropriate calls, he had been involved in sexual relationship with staff member and had threatened staff, he had not completed treatment and was on the lowest level in treatment program, and doctor stated that he was continued risk to community. In re Care and Treatment of Corley (S.C.App. 2005) 365 S.C. 252, 616 S.E.2d 441. Mental Health 466

Circuit court’s conclusory order in connection with probable cause determination of whether sexually violent predator should be released from confinement in annual review under Sexually Violent Predator Act, which appeared to be form order submitted by State, did not require reversal; review of record clearly documented factual basis for concluding that probable cause was lacking. In re Care and Treatment of Corley (S.C.App. 2005) 365 S.C. 252, 616 S.E.2d 441. Mental Health 466; Mental Health 467

Any findings by jury at annual review trial with respect to juvenile sex offender who was involuntarily committed under Sexually Violent Predator (SVP) Act could not in any way “cure” an error that occurred at initial commitment proceeding. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 2939; Mental Health 467

Sex offender failed to establish probable cause to believe his mental abnormality or personality disorder had so changed that he was safe to be released from his commitment as a sexually violent predator under the Sexually Violent Predator Act; Department of Mental Health and psychologist both reported sex offender was not ready to be released, and sex offender failed to present evidence that his mental condition had changed to the extent that he was safe to be released. In re Care and Treatment of Tucker (S.C. 2003) 353 S.C. 466, 578 S.E.2d 719. Mental Health 466

2. Justiciability

Supreme Court would not dismiss, as moot, committee’s appeal from order committing him to Department of Mental Health (DMH) as sexually violent predator (SVP), even though committee was released from DMH’s custody during pendency of his appeal; most issues he raised were capable of repetition but evading review, as there was very real possibility that many SVP appellants would be released before their appeals could be concluded. In re McCracken (S.C. 2001) 346 S.C. 87, 551 S.E.2d 235, rehearing denied. Mental Health 467

3. Review

Appellate court’s finding of error with respect to initial determination of sexually violent predator (SVP) status in involuntary commitment proceeding against juvenile rendered unnecessary a review of issues arising at post‑commitment annual review trial. In re Care and Treatment of Harvey (S.C. 2003) 355 S.C. 53, 584 S.E.2d 893, rehearing denied. Infants 3204; Mental Health 467

**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 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 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 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 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.

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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 466.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

S.C. Jur. Homicide Section 27, Aggravating Circumstances.

**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.

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

Library References

Mental Health 466.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

**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.

Library References

Mental Health 466.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289.

**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.

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

Library References

Records 31.

Westlaw Topic No. 326.

C.J.S. Colleges and Universities Section 30.

**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.

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

Library References

Mental Health 469(2).

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 290 to 291, 299.

Attorney General’s Opinions

Discussion of sex offenders of other states who relocate to South Carolina. S.C. Op.Atty.Gen. (October 10, 2006) 2006 WL 3199986.

**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.

CROSS REFERENCES

Exemption of State, or person or entity acting on behalf of State, from filing fees in proceedings brought pursuant to Sexually Violent Predator Act, see Section 14‑1‑217.

Library References

Mental Health 465(3).

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 288 to 289, 298.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Proof of Facts 3d 299, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender.

S.C. Jur. Mental Health Section 22, Overview.

NOTES OF DECISIONS

In general 1

1. In general

When the state fails to comply with the Sexually Violent Predator Act and detains a prisoner beyond his sentence, the proper procedure is to file a motion to dismiss, not to seek an invalidation of the entire Act. In re Treatment and Care of Luckabaugh (S.C. 2002) 351 S.C. 122, 568 S.E.2d 338. Mental Health 455