**South Carolina General Assembly**

118th Session, 2009-2010

**H. 4199**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrison and Kirsh

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Introduced in the House on January 12, 2010

Currently residing in the House Committee on **Judiciary**

Summary: Sexually violent predators

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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11/17/2009 House Referred to Committee on **Judiciary**

1/12/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\01-12-10.docx)‑27

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**VERSIONS OF THIS BILL**

[11/17/2009](file:///p:\pprever\2009-10\4199_20091117.docx)

**A** **BILL**

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

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

SECTION 1. Section 44‑48‑40 of the 1976 Code, as amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑40. (A) ~~When~~ If a person has ever been convicted of a sexually violent offense, the agency with jurisdiction must give written notice to the multidisciplinary team established in Section 44‑48‑50, the victim, and the Attorney General at least one hundred eighty days before:

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

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

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

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

(B) ~~When~~ If a person has ever been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release, the parole or the conditional release must be granted to be effective ~~ninety~~ one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Juvenile Parole Board, or the South Carolina Department of Corrections must immediately send notice of the parole or conditional release of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.

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

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

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

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

SECTION 2. Section 44‑48‑80(D) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“(D) If the probable cause determination is made, the court must direct that the person be transferred to ~~an appropriate secure facility including, but not limited to,~~ a local or regional detention facility for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert approved by the court at the probable cause hearing. The person must be held at the local or regional detention facility until the conclusion of the proceedings pursuant to this chapter.”

SECTION 3. Section 44‑48‑90 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑90. (A) Within sixty days after the ~~completion of a hearing held~~ the court‑approved evaluator issues an opinion pursuant to Section 44‑48‑80, the court must conduct a trial to determine whether the person is a sexually violent predator; however, this sixty day period may be extended by the court for good cause shown. Within thirty days after the ~~determination of probable cause by the court pursuant to Section 44‑48‑80,~~ evaluator issues the opinion the person or the Attorney General may request, in writing, that the trial be before a jury. If such a request is made, the court must schedule a trial before a jury at the next available date in the court of common pleas in the county where the offense was committed. If no request is made, the trial must be before a judge in the county where the offense was committed. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. ~~At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.~~

(B) ~~If a person is subjected to an examination under this chapter, the person~~ Upon receipt of the opinion issued by the court‑approved evaluator, either party may retain a qualified expert of his own choosing to ~~perform the~~ conduct 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.

(C) 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.”

SECTION 4. Section 44‑48‑100 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑100. (A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person’s mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person’s release. Upon a mistrial, the court ~~must~~ shall direct that the person be held at ~~an appropriate secure facility including, but not limited to,~~ a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury’s determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.

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

SECTION 5. Section 44‑48‑120 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

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

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

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