**A** **BILL**

TO AMEND SECTIONS 44‑48‑80, 44‑48‑90, 44‑48‑110 AND 44‑48‑120, ALL AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING, AMONG OTHER THINGS, TO THE EVALUATION OF A PERSON TO DETERMINE WHETHER HE IS A SEXUALLY VIOLENT PREDATOR, SO AS TO PROVIDE THAT THE COURT MAY REQUIRE THE PERSON TO COMPLETE CERTAIN PROCEDURES OR TESTS IF REQUESTED BY THE EXPERT CONDUCTING THE EVALUATION.

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

SECTION 1. Section 44‑48‑80(D) of the 1976 Code, as last amended by Act 158 of 2010, is further amended to read:

“(D) If the probable cause determination is made, the court ~~must~~ shall 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~~ shall 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 court may require the person to complete any or all of the following procedures or tests if requested by the expert:

(1) a clinical interview;

(2) psychological testing;

(3) plethysmograph testing;

(4) polygraph testing; and

(5) any other procedures and tests relevant to the evaluation.

The expert ~~must~~ shall 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.”

SECTION 2. Section 44‑48‑90(C) of the 1976 Code, as last amended by Act 158 of 2010, is further amended to read:

“(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~~ The expert must 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. The court may require the person to complete any or all of the following procedures or tests if requested by the expert:

(1) a clinical interview;

(2) psychological testing;

(3) plethysmograph testing;

(4) polygraph testing; and

(5) any other procedures and tests relevant to the evaluation.

In the case of an indigent person who would like an expert of his own choosing, the court ~~must~~ shall 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~~ shall assist the person in obtaining the expert to perform an examination or participate in the trial on the person’s behalf. The court ~~must~~ shall approve payment for the services upon the expert filing ~~of~~ a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.”

SECTION 3. Section 44‑48‑110 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑110. 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 court may require the person to complete any or all of the following procedures or tests if requested by the expert:

(1) a clinical interview;

(2) psychological testing;

(3) plethysmograph testing;

(4) polygraph testing; and

(5) any other procedures and tests relevant to the evaluation.

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~~ shall 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~~ shall 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~~ shall 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~~ shall 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~~ shall notify the victim of all proceedings. The Attorney General ~~must~~ shall 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~~ shall appoint an expert if the person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed person’s mental abnormality or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.”

SECTION 4. Section 44‑48‑120(B) of the 1976 Code, as last amended by Act 158 of 2010, is further amended to read:

“(B) The court, upon receipt of the petition for release, ~~must~~ shall 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 court may require the person to complete any or all of the following procedures or tests if requested by the expert:

(1) a clinical interview;

(2) psychological testing;

(3) plethysmograph testing;

(4) polygraph testing; and

(5) any other procedures and tests relevant to the evaluation.

The Attorney General ~~must~~ shall 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~~ If an indigent petitioner ~~who~~ would like an expert of his own choosing, the court ~~must~~ shall 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~~ shall 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~~ shall approve payment for the services upon the expert 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.”

SECTION 5. This act takes effect upon approval by the Governor.

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