~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 16, 2022

**S. 659**

Introduced by Senator Shealy

S. Printed 3/16/22--S.

Read the first time March 11, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 659) to amend Section 44‑48‑40(b) of the 1976 Code, relating to the effective date of parole or release, to provide an effective date for supervised, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking line 21 through line 23 on page 6, in Section 44-48-90(B), as contained in SECTION 6, and inserting therein the following:

/ only if the respondent will not be substantially prejudiced. The Attorney General must /

Amend the bill further, as and if amended, by striking line 34 on page 6, in Section 44-48-90(C), as contained in SECTION 6, and inserting therein the following:

/ ~~expert~~ to perform a subsequent ~~examination~~ evaluation. If the court‑appointed /

Amend the bill further, as and if amended, by striking line 15 on page 7, in Section 44-48-90(C), as contained in SECTION 6, and inserting therein the following:

/ access to the person for the purpose of the evaluation, as well as /

Amend the bill further, as and if amended, by striking lines 11 and 12 on page 12, in Section 44-48-115(J), as contained in SECTION 9, and inserting therein the following:

/ (J) Upon receipt by the Supreme Court of the findings and conclusions of the designated judge, the /

Amend the bill further, as and if amended, beginning on page 12 and ending on page 13, by striking SECTION 10 in its entirety, and inserting therein the following:

/ SECTION 10. Section 44‑48‑120 of the 1976 Code is amended to read:

“(A) If the Director of the Department of Mental Health determines that the ~~person's~~ resident’s mental abnormality or personality disorder has so changed that the ~~person~~ resident 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~~ resident 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.~~  Upon receipt of the certification and authorization, the resident or the Attorney General may file a petition for release, which must be served upon the court and the Attorney General, or on opposing counsel if filed by the Attorney General. The Attorney General must notify the victim of the proceeding.

(B) The court, upon receipt of the petition for release filed pursuant to subsection (A), must order a hearing within thirty days unless the Attorney General, with notice to the resident, requests an ~~examination~~ evaluation by a qualified ~~expert~~ evaluator as to whether the ~~petitioner’s~~ resident’s mental abnormality or personality disorder has so changed that the resident ~~petitioner~~ is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the resident ~~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~~ resident examined by a qualified ~~experts~~ evaluator chosen by the State. If the petition is filed with the authorization of the Department of Mental Health as provided by in subsection (A), then the Department of Mental Health’s‑designated qualified evaluator must appear as a witness at the hearing or trial. If the Attorney General’s qualified evaluator determines that the resident still meets the criteria for confinement as a sexually violent predator, then the resident may seek another evaluation at the resident’s personal expense. No public funds shall be authorized for the subsequent evaluation sought by the resident or for the testimony provided by this evaluator. All qualified evaluators are permitted to have reasonable access to the resident for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the resident to comply with any testing and assessments deemed necessary by a qualified evaluator. ~~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 resident’s ~~petitioner’s~~ mental abnormality or personality disorder remains such that the resident ~~petitioner~~ is not safe to be at large and, that if released, is likely to commit acts of sexual violence.” /

Amend the bill further, as and if amended, page 14, line 14, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_. Chapter 48 of Title 44 of the 1976 Code is amended by adding:

“Section 44-48-180. All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings or trials.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends the Sexually Violent Predators Act in regards to the parole, release, and commitment procedures for persons convicted of sexually violent offenses. Further, it defines whether or not a person meets the definition of a sexually violent predator and establishes procedures for those persons. Additionally, it defines new terms and provides for supervised re-entry.

This bill will have no expenditure impact on the Commission on Prosecution Coordination (PCC), the Department of Probation, Parole and Pardon Services (DPPPS), the Department of Mental Health (DMH), the Department of Juvenile Justice (DJJ), Judicial, or the Department of Corrections (Corrections). PCC, DPPS, DJJ, Corrections and Judicial anticipate that any additional responsibilities can be managed with existing staff and within existing appropriations. PCC does not handle Sexually Violent Predator Act cases. DMH stated that their current practices already follow the requirements of this bill.

**Commission on Indigent Defense.** CID is responsible for establishing and monitoring programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. CID has determined that the bill will have an expenditure impact to the agency. The bill could result in the need for additional staff, office space, additional equipment, and other costs associated with additional caseloads. However, at this time the agency is unable to determine what costs may incur as there is no empirical data on the number of new caseloads. Therefore, this bill will result in an undetermined General Fund increase for CID.

**Attorney General's Office.** The Legal Services Division of the Office of the Attorney General handles a variety of non-criminal matters on behalf of the state. Along with the sixteen Circuit Solicitors, the Attorney General is responsible for the prosecution of all criminal matters within the South Carolina judicial system. The expenditure impact of this bill is pending, contingent on a response from the Attorney General's Office.

**Local Expenditure**

RFA contacted twenty-three county governments regarding the expenditure impact of this bill as it pertains to local Clerks of Courts and Registers of Deeds. Chesterfield County responded, stating that this bill would have no impact to the county. Based on the response received from Chesterfield County, RFA anticipates this bill will have no expenditure impact for locals. This fiscal impact statement will be updated if additional local responses are provided.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44‑48‑40(B) OF THE 1976 CODE, RELATING TO THE EFFECTIVE DATE OF PAROLE OR RELEASE, TO PROVIDE AN EFFECTIVE DATE FOR SUPERVISED RE‑ENTRY FOR A PERSON CONVICTED OF A SEXUALLY VIOLENT OFFENSE; TO AMEND SECTION 44‑48‑50 OF THE 1976 CODE, RELATING TO THE MULTIDISCIPLINARY TEAM, APPOINTMENTS, THE REVIEW OF RECORDS, AND THE MEMBERSHIP OF THE MULTIDISCIPLINARY TEAM, TO PROVIDE FOR AN ASSESSMENT OF WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE THAT A PERSON SATISFIES THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR, TO PROVIDE REPORTING REQUIREMENTS, AND TO PROVIDE FOR THE MEMBERSHIP OF THE MULTIDISCIPLINARY TEAM; TO AMEND SECTION 44‑48‑80(D) OF THE 1976 CODE, RELATING TO TAKING A PERSON INTO CUSTODY, HEARINGS, AND EVALUATIONS, TO PROVIDE FOR AN EVALUATION BY A COURT‑APPOINTED QUALIFIED EVALUATOR WITHIN A CERTAIN TIME PERIOD, TO PROVIDE FOR AN INDEPENDENT EVALUATION BY AN INDEPENDENT QUALIFIED EVALUATOR WITHIN A CERTAIN TIME PERIOD, AND TO PROVIDE FOR AN EXTENSION IN EXTRAORDINARY CIRCUMSTANCES; TO AMEND SECTION 44‑48‑90(B) AND (C) OF THE 1976 CODE, RELATING TO A TRIER OF FACT, THE CONTINUATION OF A TRIAL, THE ASSISTANCE OF COUNSEL, THE ACCESS OF EXAMINERS TO A PERSON, AND THE PAYMENT OF EXPENSES, TO MAKE CONFORMING CHANGES, TO PROVIDE THAT CERTAIN CASES SHALL BE GIVEN PRIORITY STATUS, AND TO PROVIDE FOR COUNSEL AND THE PAYMENT AND COSTS FOR AN INDEPENDENT QUALIFIED EVALUATOR FOR AN INDIGENT PERSON; TO AMEND SECTION 44‑48‑100(B) OF THE 1976 CODE, RELATING TO PERSONS INCOMPETENT TO STAND TRIAL, TO PROVIDE THAT A COURT SHALL CONDUCT A NON‑JURY HEARING FOR A PERSON CHARGED WITH A SEXUALLY VIOLENT OFFENSE WHO HAS BEEN FOUND INCOMPETENT TO STAND TRIAL, WHO IS ABOUT TO BE RELEASED, AND WHOSE COMMITMENT IS SOUGHT; TO AMEND SECTION 44‑48‑110 OF THE 1976 CODE, RELATING TO THE PERIODIC MENTAL EXAMINATION OF COMMITTED PERSONS, REPORTS, PETITIONS FOR RELEASE, HEARINGS, AND TRIALS TO CONSIDER RELEASE, TO MAKE CONFORMING CHANGES, TO PROVIDE FOR AN EVALUATION BY A DEPARTMENT OF MENTAL HEALTH‑DESIGNATED QUALIFIED EVALUATOR WITHIN A CERTAIN TIME PERIOD AND UNDER CERTAIN CONDITIONS, AND TO PROVIDE FOR PERIODIC REVIEW HEARINGS AND THE PRESENCE OF THE RESIDENT AND THE DEPARTMENT OF MENTAL HEALTH‑DESIGNATED QUALIFIED EVALUATOR AT HEARINGS; TO AMEND CHAPTER 48, TITLE 44 OF THE 1976 CODE, RELATING TO THE SEXUALLY VIOLENT PREDATOR ACT, BY ADDING SECTION 44‑48‑115, TO PROVIDE THAT A RESIDENT SHALL HAVE THE RIGHT TO CHALLENGE COMMITMENT UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE CERTAIN CONDITIONS THEREOF; TO AMEND SECTION 44‑48‑120(B) OF THE 1976 CODE, RELATING TO HEARINGS ORDERED BY A COURT, EXAMINATION BY A QUALIFIED EXPERT, AND THE BURDEN OF PROOF, TO MAKE CONFORMING CHANGES, TO PROVIDE FOR THE PRESENCE OF A DEPARTMENT OF MENTAL HEALTH‑DESIGNATED QUALIFIED EVALUATOR AT A HEARING OR TRIAL, AND TO PROVIDE THAT A RESIDENT MAY SEEK ANOTHER EVALUATION AT HIS OWN EXPENSE; TO AMEND SECTION 44‑48‑150 OF THE 1976 CODE, RELATING TO EVIDENTIARY RECORDS AND A COURT ORDER TO OPEN SEALED RECORDS, TO PROVIDE FOR THE RELEASE OF RECORDS TO THE ATTORNEY GENERAL AND COUNSEL OF RECORD; TO AMEND SECTION 24‑21‑32(C) OF THE 1976 CODE, RELATING TO REENTRY SUPERVISION AND REVOCATION, TO PROVIDE THAT CERTAIN INMATES ARE NOT ELIGIBLE FOR SUPERVISED RE‑ENTRY UNTIL THE RESOLUTION OF CERTAIN PROCEEDINGS; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. Section 44‑48‑30 of the 1976 Code is amended by adding appropriately numbered new items to read:

“( ) ‘Qualified evaluator’ means an individual who has education, training, and experience in sex offender evaluations and who is:

(1) a psychiatrist or psychologist licensed in this State; or

(2) a trainee of the Department of Mental Health’s Fellowship Program who is working under the supervision and license of a Department of Mental Health psychiatrist or psychologist and who is approved for exemption by the Department of Mental Health Fellowship Program.

( ) ‘Resident’ means a person who has been committed as a sexually violent predator for the purposes of long‑term control, care, and treatment.”

SECTION 2. Section 44‑48‑30(9) of the 1976 Code is amended to read:

“(9) ‘Likely to engage in acts of sexual violence’ means that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in ~~the person’s propensity to commit~~ acts of sexual violence ~~is of~~ to such a degree as to pose a menace to the health and safety of others.”

SECTION 3. Section 44‑48‑40(B) of the 1976 Code is amended to read:

“(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 or supervised re‑entry, then the parole, ~~or the~~ conditional release, or supervised re‑entry must be granted to be effective one hundred eighty days after the date of the order of parole, ~~or~~ conditional release, or supervised re‑entry. 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, or supervised re‑entry 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, then the person is subject to the provisions of this chapter even though the person has been released on parole, ~~or~~ conditional release, or supervised re‑entry.”

SECTION 4. Section 44‑48‑50 of the 1976 Code is amended to read:

“Section 44‑48‑50. (A) 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 there is probable cause to believe the person satisfies the definition of a sexually violent predator. If it is determined that probable cause does exist ~~that the person satisfies the definition of a sexually violent predator~~, then 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 education, training, or experience in assessing, examining, or treating sex ~~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.

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

SECTION 5. Section 44‑48‑80(D) of the 1976 Code is amended to read:

“(D) If the probable cause determination is made, then the court must direct that, upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending the 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 and must order the person to comply with all testing and assessments deemed necessary by a court‑appointed qualified evaluator. ~~The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing.~~ The ~~expert~~ court‑appointed qualified evaluator must complete the evaluation within ~~sixty~~ ninety days after the Department of Mental Health provides written certification to the Attorney General’s Office and the person’s legal counsel that it has received all medical, psychological, criminal offense, and disciplinary records and reports concerning the person but not greater than one hundred eighty days after the probable cause order is filed ~~completion of the probable cause hearing~~. The court may grant one extension upon the request of the court‑appointed qualified evaluator ~~expert~~ and a showing of ~~good cause. Any further extensions only may be granted for~~ extraordinary circumstances. After the evaluation by the court‑appointed qualified evaluator, if the person or the Attorney General seeks an independent evaluation by an independent qualified evaluator, pursuant to Section 44‑48‑90(C), then that evaluation must be completed within ninety days after receipt of the report by the court‑appointed qualified evaluator. The court may grant an extension upon the request of the independent qualified evaluator and a showing of extraordinary circumstances. Any qualified evaluator who will be submitted as an expert at either a hearing or trial must submit a written report available to both parties.”

SECTION 6. Section 44‑48‑90(B) and (C) of the 1976 Code is amended to read:

“(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 independent qualified evaluator requested by the person or Attorney General pursuant to Section 44‑48‑90(C) ~~court appointed expert~~ issues a report ~~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, and the case shall be treated as a priority case. If neither party seeks an independent evaluation ~~a request is made~~, then the ~~court~~ trial must be ~~schedule a trial~~ before a judge, or a jury if a jury trial is requested, in the county where the offense was committed within ninety days of the date the court appointed qualified evaluator ~~expert~~ issues the evaluation report 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. All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings or trials. 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 designated by the Office of Indigent Defense to handle sexual predator cases to assist the person.

(C) Upon receipt of the evaluation issued by the court appointed qualified evaluator ~~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~~ an independent qualified evaluator ~~expert~~ to perform a subsequent examination. If the court‑appointed qualified evaluator determines that the person is not a sexually violent predator, then the Attorney General, with notice to the person, may seek an independent evaluation pursuant to this section. If the court‑appointed qualified evaluator determines that the person is a sexually violent predator, then the person, with notice to the Attorney General, may seek an opinion by an independent qualified evaluator pursuant to this section. ~~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 requests ~~would like~~ an independent qualified evaluator ~~expert of his own choosing~~, the indigent person must file and serve upon the Attorney General a motion requesting payment and costs ~~court must determine whether the services are necessary~~. The Attorney General shall have ten days from the date of service to file a response to the motion. If the court determines that the ~~services are necessary and the expert’s requested~~ compensation for the independent qualified evaluator ~~services~~ is reasonable, then the court must assist the person in obtaining the independent qualified evaluator ~~expert~~ to perform an evaluation ~~examination~~ or participate in the trial on the person’s behalf and must approve all reasonable expenses associated with the evaluation. All qualified evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. The court shall order ~~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 to comply with any testing and assessments deemed necessary by the qualified evaluator for a thorough evaluation~~, and compensation received in the case or for the same services from any other source~~.”

SECTION 7. Section 44‑48‑100(B) of the 1976 Code is amended to read:

“(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), then the court first shall conduct a non‑jury hearing, where it will 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 hearings ~~trials~~, except ~~other than~~ the right not to be tried while incompetent and the right to a jury trial, 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, then 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 8. Section 44‑48‑110 of the 1976 Code is amended to read:

“Section 44‑48‑110. (A)(1) A ~~person~~ resident committed pursuant to this chapter must have an evaluation ~~examination~~ of his mental condition performed by a Department of Mental Health‑designated qualified evaluator within one ~~once every~~ year from the filing date of the initial commitment order. Thereafter, a Department of Mental Health‑designated qualified evaluator will evaluate the resident’s mental condition within one year after a pending review is resolved by a filed court order indicating:

(a) a finding of no probable cause;

(b) a waiver by the resident; or

(c) an order of continued commitment after a periodic review trial.

(2) The designated qualified evaluator’s report is admissible as evidence at any hearing and must be provided to the clerk of the court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident.

(B) The resident ~~person~~ may retain or, if the resident ~~person~~ is indigent and so requests, the court may appoint a qualified evaluator ~~expert~~ to evaluate ~~examine~~ the resident ~~person~~, and the resident’s qualified evaluator ~~expert~~ must have reasonable access to all medical, psychological, criminal offense, ~~and~~ disciplinary, and treatment records and reports concerning the resident ~~person~~. In the case of an indigent resident who seeks to retain a qualified evaluator, the indigent resident must file and serve upon the Attorney General a motion requesting payment and costs. The Attorney General shall have ten days from the date of service to file a response to the motion. If, after considering the number and dates of the resident’s prior requests for funding, the court determines the resident’s request is reasonable, then the court must approve all reasonable expenses associated with the evaluation.

(C) ~~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~~ After the designated qualified evaluator’s report is filed, the court must conduct a ~~an annual~~ hearing to review the resident’s status ~~of the committed person~~, unless the resident waives the hearing in writing. ~~The committed person is not prohibited from petitioning the court for release at this hearing.~~

(D) The ~~Director of the~~ Department of Mental Health must provide the resident ~~committed person~~ with ~~an annual~~ written notice of the resident’s ~~person’s~~ right to petition the court for release without the Department of Mental Health’s authorization and ~~over the director’s objection; the notice must contain~~ a waiver of rights form, within one year of the last periodic review order or waiver of rights. The department ~~director~~ must forward the designated qualified evaluator’s report with the notice and waiver form to the clerk of court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident ~~with the annual report~~.

(E) The resident ~~committed person~~ has a right to have an attorney represent him at the periodic review hearing, but the resident ~~committed person~~ is not entitled to be present at the hearing. The resident may only be present at the hearing upon the issuance of a transport order received by the Department of Mental Health within not less than fifteen days of the hearing date. The Department of Mental Health‑designated qualified evaluator will only be required to be present at the hearing if subpoenaed by the resident’s attorney or the Attorney General in accordance with the South Carolina Rules of Civil Procedure. The Department of Mental Health must accept service of subpoenas for the appearance of the Department of Mental Health-designated qualified evaluator at the periodic review hearing.

(F) If the court determines that probable cause exists to believe that the resident’s ~~person’s~~ mental abnormality or personality disorder has so changed that the resident ~~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 resident ~~committed person is entitled to be present and~~ is entitled to the benefit of all constitutional protections that were afforded the resident ~~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 resident ~~committed person~~ evaluated by a qualified evaluator ~~experts~~ chosen by the State. The trial must be before a jury if requested by either the resident ~~person~~, the Attorney General, or the solicitor. The resident ~~committed person~~ also has the right to have a qualified evaluator ~~experts~~ evaluate the resident ~~person~~ on the resident’s ~~person’s~~ behalf, and the court must appoint ~~an~~ a qualified evaluator ~~expert~~ if the resident ~~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 resident’s ~~committed person’s~~ mental abnormality or personality disorder remains such that the resident ~~person~~ is not safe to be at large and, if released, is likely to engage in acts of sexual violence.”

SECTION 9. Chapter 48, Title 44 of the 1976 Code is amended by adding:

“Section 44‑48‑115. (A) A resident committed to the South Carolina Sexually Violent Predator Treatment Unit shall have the right to challenge the commitment and subsequent periodic reviews based on the ineffective assistance of counsel during the resident’s commitment trial or periodic review proceedings.

(B) Petitions shall be filed in the original jurisdiction of the South Carolina Supreme Court under the South Carolina Appellate Court Rules within thirty days of the date that any appeals from the commitment or periodic review proceedings are final. Upon the receipt of the petition, the Clerk of Court of the Supreme Court shall issue an order designating a circuit court or appellate court judge as a referee to make appropriate findings of fact and conclusions of law and shall report the findings and conclusions to the Supreme Court. The designated judge shall have the statewide authority to issue orders as necessary.

(C) Except as provided in this chapter, the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence apply to cases filed pursuant to this section, in evidentiary hearings before the designated hearing judge.

(D) The named respondent shall be the Department of Mental Health. A copy of the petition shall be served on the Department of Mental Health and the South Carolina Attorney General’s Office.

(E) Upon the filing of a petition alleging that the resident is indigent and desires appointed counsel, the designated judge shall appoint an attorney to represent the resident. Counsel shall be appointed from the contract attorney list of post‑conviction counsel maintained by the South Carolina Commission on Indigent Defense, or such other list of attorneys as the Executive Director of the South Carolina Commission on Indigent Defense shall designate to the court. If no attorney is available from this list, then the designated circuit court judge shall appoint an attorney from the Appointment of Lawyers for Indigents. The designated judge shall not appoint an attorney who previously represented the resident in any prior criminal proceedings underlying the commitment or state post‑conviction relief proceedings or appeals therefrom, in the original sexually violent predator civil commitment proceeding or appeal therefrom, or in any previous or present periodic reviews or appeals therefrom.

(F) The designated judge shall authorize by court order to the particular county clerks of court the disclosure of any pleadings, evidence, transcripts, or other documents filed in any circuit court or appellate court clerk’s office of this State in any case in which the resident was a defendant, respondent, or party to a criminal action or an action under the Sexually Violent Predator Act that was ordered sealed. These materials shall be unsealed for the limited purpose of providing items to the appointed counsel for the resident or the resident himself, if he elects to proceed pro se, and to the Department of Mental Health and its attorneys.

(G) Regardless of whether the resident indicates that he has served the Department of Mental Health, the Clerk of Court of the South Carolina Supreme Court shall forward the filed petition and all accompanying papers to the Department of Mental Health’s Office of General Counsel, as the agent for the service of process for the Department of Mental Health, and a copy to the Attorney General’s office. The Department of Mental Health, through the Attorney General’s Office acting as its representative, shall file its responsive pleading within thirty days of the receipt of the order appointing counsel, or within thirty days of the receipt of the petition, if counsel is retained, or the receipt of the petition, if the resident is proceeding pro se without a request for counsel at the time of the filing.

(H) In the event that a habeas petition alleging ineffective assistance of counsel claims relating to the resident’s commitment or periodic review is filed before the conclusion of the resident’s appeal therefrom, the Clerk of the Supreme Court shall dismiss the petition without prejudice and without requiring a response from the Department of Mental Health.

(I) Within thirty days of an assignment, the designated judge shall issue a scheduling order, including a discovery schedule, and shall set a hearing within not more than one hundred eighty days from the filing of the petition. A final report to the Supreme Court shall be submitted within thirty days from the conclusion of the hearing, including findings of fact and conclusions of law that provide evidence of the ineffective assistance of counsel and show a reasonable probability that the ineffective assistance of counsel altered the results of the proceeding. This does not preclude the designated judge from recommending to the Supreme Court that the petition be denied on the basis of the pleadings without a hearing, if appropriate, upon a motion by the Department of Mental Health.

(J) Upon the receipt of the findings and conclusions of the designated judge to the Supreme Court by the designated judge, the Clerk of the Supreme Court may set forth an appropriate briefing schedule. The clerk may consider expediting the matter to determine whether the writ of habeas corpus should be granted and the appropriate relief therefrom. The court may also issue, as appropriate, orders relating to whether intervening and on‑going statutory status review proceedings or appeals therefrom are affected in any manner by the habeas corpus actions in its original jurisdiction.”

SECTION 10. Section 44‑48‑120(B) of the 1976 Code is amended to read:

“(B) The court, upon receipt of the petition for release filed pursuant to Section 44‑48‑120(A), must order a hearing within thirty days unless the Attorney General, with notice to the resident, requests an examination by a qualified evaluator ~~expert~~ as to whether the resident’s ~~petitioner’s~~ mental abnormality or personality disorder has so changed that the resident ~~petitioner~~ is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the resident ~~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 resident ~~petitioner~~ examined by a qualified evaluator ~~experts~~ chosen by the State. If the petition is filed with the authorization of the Department of Mental Health provided by this section, then the Department of Mental Health‑designated qualified evaluator shall appear as a witness at the hearing or trial. If the Attorney General’s qualified evaluator determines that the resident still meets the criteria for confinement as a sexually violent predator, then the resident may seek another evaluation at his own expense. All qualified evaluators are permitted to have reasonable access to the resident for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the resident to comply with any testing and assessments deemed necessary by a qualified evaluator. ~~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 resident’s ~~petitioner’s~~ mental abnormality or personality disorder remains such that the resident ~~petitioner~~ is not safe to be at large and, that if released, is likely to commit acts of sexual violence. All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings or trials.”

SECTION 11. Section 44‑48‑150 of the 1976 Code is amended to read:

“Section 44‑48‑150. 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. Nothing in this section prohibits the release of records to the Attorney General and the counsel of record for a person.”

SECTION 12. Section 24‑21‑32(C) of the 1976 Code is amended to read:

“(C) The individual terms and conditions of reentry supervision shall be developed by the department using an evidence‑based assessment of the inmate’s needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director. However, if, under the Sexually Violent Predator Act, the multidisciplinary team finds probable cause to believe that an inmate is a sexually violent predator pursuant to Section 44‑48‑50, then the inmate is not eligible for the supervised re‑entry program until the resolution of the proceedings pursuant to the Sexually Violent Predator Act.”

SECTION 13. This act takes effect upon approval by the Governor.

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