

A1919

SPONSORS STATEMENT: (Begins on page 14 of original bill) Yes
 Bill and Sponsors statement identical to S895

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE No

A1615

SPONSORS STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS:

974.90 New Jersey. Task Force For the Review of the Treatment of the
 I52 Criminally Insane. Yes
 1997a Report..., October, 1997.

974.90 New Jersey. Joint Legislative Task Force to Study the Adult Diagnostic and
 S518 Treatment Center.
 1995 Report..., June 19, 1995.

HEARINGS:

974.90 New Jersey. Task Force For the Review of the Treatment of the Criminally
 I52 Insane. Yes
 1997 Public hearing held 5-13-97, Morristown, NJ, 1997.

974.90 New Jersey. Joint Legislative Task Force to Study the Adult Diagnostic and
 S518 Treatment Center.
 1994 Meetings held 11-1-94, 12-6-94, 2-1-95 & 3-15-95, Avenel, Woodbridge, Trenton.

NEWSPAPER ARTICLES:

"Senate measure seeks to keep violent sex offenders confined," 5-29-98, Asbury Park Press, p. A12.
 "Bill keeps more sex offenders confined," 5-29-98, Bridgewater Courier News, p. A6
 "Whitman approves bills focusing on sex offenses," 8-13-98, New York Times, p. 36.
 "Whitman signs tougher sex offender measure," 8-13-98, Asbury Park Press, p. A1.
 "Whitman signs tough laws for sex offenders," 8-13-98, Atlantic City Press, p. A1.

Case cited in Sponsors' statement to A1615 is *Kansas v. Hendricks*, 521 U.S. 346
 117 S.Ct. 2072, 138 L.Ed. 2d 501 (1997)

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 895**

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Assembly Appropriations Committee reports favorably Senate Bill No. 895 SCS.

Senate Bill No. 895 SCS establishes a civil procedure for the involuntary commitment of sexually violent predators.

Under existing law, persons are subject to involuntary commitment if they suffer from a "mental illness" as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2). However, a sexually violent predator may not always be characterized as mentally ill. Therefore, this bill establishes an involuntary civil commitment procedure for a sexually violent predator, whom the bill defines as a person who: (1) has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial; and (2) 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 control, care and treatment.

The Department of Corrections will be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and will provide or arrange for custodial care. The Division of Mental Health Services in the Department of Human Services will provide or arrange for treatment tailored to address the specific needs of sexually violent predators.

The bill provides a 90-day time frame within which the Attorney General must be notified of the release or discharge, as appropriate, of a person who was convicted of a sexually violent offense, found to lack mental competence to stand trial pursuant to N.J.S.2C:4-6 or acquitted by reason of insanity of a sexually violent offense.

The bill defines "sexually violent offense" as:

(1) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying crime is sexual assault; or an attempt to commit any of these enumerated offenses;

(2) a criminal offense with substantially the same elements as any offense enumerated in paragraph (1) entered or imposed under the laws of the United States, this State or another state; or

(3) any offense for which the court 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.

Similar to the provisions of the current civil commitment law applicable to persons suffering from mental illness, section 10 of P.L.1987, c.116 (C.30:4-27.10), the Attorney General may initiate a court proceeding for involuntary commitment under this bill by submitting to the court a clinical certificate for a sexually violent predator, completed by a psychiatrist on the person's treatment team, and the screening certificate which authorized admission of the person to the facility; or two clinical certificates, at least one of which is prepared by a psychiatrist. Also, the Attorney General may apply to the court for an order compelling psychiatric evaluation. In addition, the Attorney General may initiate proceedings for a person scheduled for release upon expiration of a maximum term of incarceration, and in the exercise of the State's authority as parens patriae, may initiate proceedings for any person, by filing required submissions with the court.

Upon receipt of these documents, the court shall immediately review them to determine whether there is probable cause to believe that the person is a sexually violent predator in need of involuntary commitment. If so, the court shall issue an order for a final hearing and temporarily authorize commitment to a secure facility designated for the custody, care and treatment of sexually violent predators.

Similar to the current civil commitment law applicable to persons suffering from mental illness, section 12 of P.L.1987, c.116 (C.30:4-27.12), the person shall receive a court hearing within 20 days from the date of the temporary commitment order. At this hearing, the Attorney General is responsible for presenting the case for commitment, and the person must have counsel present.

At least 10 days prior to the final hearing, the Attorney General must cause notice of the hearing to be served upon the person, the person's guardian if any, the person's next-of-kin, the person's attorney, the agency with jurisdiction having custody of the person and any other individual specified by the court. The person's psychiatrist on the treatment team, who has examined the person no more than five calendar days prior to the court hearing, must testify to the clinical basis for the need for involuntary commitment as a sexually violent predator. Other treatment team members, relevant witnesses or next-of-kin are also permitted to testify and the court must transcribe the hearing and arrange for the payment of these expenses.

At this hearing, and any subsequent review court hearing, the person has the following rights:

- The right to be represented by counsel or, if indigent, by appointed counsel;

- The right to be present at the court hearing unless the court determines that because of the person's conduct at the court hearing the proceeding cannot reasonably continue while the person is present;
- The right to present evidence;
- The right to cross-examine witnesses; and
- The right to a hearing in camera.

The bill provides that if the court finds by clear and convincing evidence that the person is in need of involuntary commitment, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for custody, care and treatment of sexually violent predators. Also, the court may order that the person be conditionally discharged in accordance with a plan to facilitate the person's adjustment and reintegration into the community, if the court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with the plan.

The bill permits the court to hold a hearing on whether a person who was found to lack mental competence to stand trial pursuant to N.J.S.2C:4-6 did commit the act charged. The rules of evidence used in a criminal case apply, and if the court finds beyond a reasonable doubt that the person did commit the act charged, the court may proceed to consider commitment of the person under this bill.

Additionally, the bill provides for annual court review hearings of the need for involuntary commitment as a sexually violent predator. The first hearing shall be conducted 12 months from the date of the first hearing, and subsequent hearings annually thereafter. In addition, at any time during involuntary commitment, if the person's treatment team determines that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, the treatment team shall recommend that the Department of Human Services authorize the person to petition the court for discharge. Also, a person may petition the court for discharge without authorization from the department. In this case, the court shall review the petition to determine whether it is based on facts upon which a court could find that the person's condition had changed, or whether the petition is supported by a professional expert evaluation or report. If the petition fails to satisfy either of these requirements, the court shall deny the petition without a hearing.

Lastly, the bill provides for discharge plans to be prepared by the treatment team and with the participation of the person, and for victim notification of a sexually violent predator's release to be conducted by the Department of Corrections, in conjunction with the Attorney General or county prosecutor and the county Office of Victim and Witness Advocacy.

This bill is part of a package of legislation that was recommended by the Governor's Task Force for the Review of the Treatment of the Criminally Insane.

FISCAL IMPACT:

The bill requires that sexual predators be segregated from other offenders in a secure facility. The Department of Corrections has developed a staffing analysis based on a 150 bed sexual predator unit requiring 69 custody staff positions with expected cost of \$5 million and 26 correctional civilian staff positions costing \$1 million. The Division of Mental Health Services indicates that an additional 44 treatment staff positions costing \$2.3 million would also be required for a total cost (at current cost levels) of \$8.3 million. Initial non-salary operating costs would total \$1.3 million for a total of \$9.6 million annually.

Actual costs are unknown, due to uncertainty as to commitments and the identification of the facility. Presumably, staff would be hired as commitments occur, and selection of the facility will affect custody and staffing patterns. Precise capital construction costs cannot be determined prior to selection of the site. The Office of Legislative Services notes that the cost of constructing one additional prison bed ranges from \$60,000 to \$ 95,000 depending upon the security level of the bed. These cost estimates do not include legal costs.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 895

STATE OF NEW JERSEY

DATED: MAY 21, 1998

The Senate Law and Public Safety Committee reports favorably a Senate Committee Substitute for Senate Bill No. 895.

This bill establishes a civil procedure for the involuntary commitment of sexually violent predators. Under existing law, persons are subject to involuntary commitment if they suffer from a mental illness as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2). However, a sexually violent predator may not always be characterized as mentally ill. Therefore, this bill establishes an involuntary civil commitment procedure for a sexually violent predator, which is defined in the bill as a person who: (1) has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial; and (2) 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 control, care and treatment.

The Department of Corrections would be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and would provide or arrange for custodial care. The Division of Mental Health Services in the Department of Human Services would provide or arrange for treatment which would be tailored to address the specific needs of sexually violent predators.

The bill provides a 90-day time frame within which the Attorney General must be notified of the release or discharge, as appropriate, of a person who was convicted of a sexually violent offense, found to lack mental competence to stand trial pursuant to N.J.S. 2C:4-6 or acquitted by reason of insanity of a sexually violent offense.

Sexually violent offense is defined in the bill as (1) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying crime is sexual assault; or an attempt to commit any of these enumerated offenses; (2) a criminal offense with substantially the same elements

as any offense enumerated in paragraph (1) entered or imposed under the laws of the United States, this State or another state; or (3) any offense for which the court 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.

Similar to the provisions of section 10 of P.L.1987, c.116 (C.30:4-27.10), the Attorney General may initiate a court proceeding for involuntary commitment under this bill by submitting to the court a clinical certificate for a sexually violent predator, completed by a psychiatrist on the person's treatment team, and the screening certificate which authorized admission of the person to the facility; or two clinical certificates, at least one of which is prepared by a psychiatrist. Also, the Attorney General may apply to the court for an order compelling psychiatric evaluation. In addition, the Attorney General may initiate proceedings for a person scheduled for release upon expiration of a maximum term of incarceration, and in the exercise of the State's authority as *parens patriae*, may initiate proceedings of any person, by filing required submissions with the court.

Upon receipt of these documents, the court shall immediately review them to determine whether there is probable cause to believe that the person is a sexually violent predator in need of involuntary commitment. If so, the court shall issue an order for a final hearing and temporarily authorize commitment to a secure facility designated for the custody, care and treatment of sexually violent predators.

Similar to the provisions of section 12 of P.L.1987, c.116 (C.30:4-27.12), the person shall receive a court hearing within 20 days from the date of the temporary commitment order. At this hearing, the Attorney General is responsible for presenting the case for commitment, and the person must have counsel present.

At least 10 days prior to the final hearing, the Attorney General must cause notice of the hearing to be served upon the person, the person's guardian if any, the person's next-of-kin, the person's attorney, the agency with jurisdiction having custody of the person and any other individual specified by the court. The person's psychiatrist on the treatment team, who has examined the person no more than five calendar days prior to the court hearing, must testify to the clinical basis for the need for involuntary commitment as a sexually violent predator. Other treatment team members, relevant witnesses or next-of-kin are also permitted to testify and the court must transcribe the hearing and arrange for the payment of these expenses.

At this hearing, and any subsequent review court hearing, the person has the following rights:

- The right to be represented by counsel or, if indigent, by appointed counsel;
- The right to be present at the court hearing unless the court determines that because of the person's conduct at the court

hearing the proceeding cannot reasonably continue while the person is present;

- The right to present evidence;
- The right to cross-examine witnesses; and
- The right to a hearing in camera.

The bill provides that if the court finds by clear and convincing evidence that the person is in need of involuntary commitment, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for custody, care and treatment of sexually violent predators. Also, the court may order that the person be conditionally discharged in accordance with a plan to facilitate the person's adjustment and reintegration into the community, if the court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with the plan.

The bill permits the court to hold a hearing on whether a person who was found to lack mental competence to stand trial pursuant to N.J.S.2C:4-6 did commit the act charged. The rules of evidence apply, and if the court finds beyond a reasonable doubt that the person did commit the act charged, the court may proceed to consider commitment of the person under this bill.

Additionally, the bill provides for annual court review hearings of the need for involuntary commitment as a sexually violent predator. The first hearing shall be conducted 12 months from the date of the first hearing, and subsequent hearings annually thereafter. In addition, at any time during involuntary commitment, if the person's treatment team determines that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, the treatment team shall recommend that the Department of Human Services authorize the person to petition the court for discharge. Also, a person may petition the court for discharge without authorization from the department. In this case, the court shall review the petition to determine whether it is based on facts upon which a court could find that the person's condition had changed, or whether the petition is supported by a professional expert evaluation or report. If the petition fails to satisfy either of these requirements, the court shall deny the petition without a hearing.

Lastly, the bill provides for discharge plans to be prepared by the treatment team and with the participation of the person, and for victim notification of a sexually violent predator's release to be conducted by the Department of Corrections, in conjunction with the Attorney General or county prosecutor and the county Office of Victim and Witness Advocacy.

This bill is part of a package of legislation that was recommended by the Governor's Task Force for the Review of the Treatment of the Criminally Insane.

FISCAL NOTE

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 895**

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JULY 20, 1998

Senate Committee Substitute for Senate Bill No. 895 of 1998 establishes a civil procedure for the involuntary commitment of sexually violent predators who are defined as a person who: (1) has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial; and (2) 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 control, care and treatment. Under the bill, the Department of Corrections would be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and would provide or arrange for custodial care. The Division of Mental Health Services in the Department of Human Services would provide or arrange for treatment which would be tailored to address the specific needs of sexually violent predators.

The Department of Corrections states that for the purposes of developing this fiscal analysis, a staffing pattern has been developed for a 150-bed Sexual Predator unit. Actual costs would be determined by the site location and size of the proposed unit.

According to the Department of Corrections, 69 custody staff positions costing \$5 million and 26 correctional civilian staff positions costing \$1 million would be required for the new unit. Data received from the Division of Mental Health Services indicates that an additional 44 mental health staff positions costing \$2.3 million would also be required, for a total first-year salary cost of \$8.3 million. First-year non-salary costs would total \$1.3 million for the operation of the unit, for a total first year operational cost of \$9.6 million.

The Office of Legislative Services (OLS) notes that while the cost of constructing this new unit has not been estimated by the Department of Corrections, the cost of constructing one additional prison bed space ranges between \$60,000 to \$95,000 depending upon the security level of the bed.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY APPROPRIATIONS COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1919 and 1615

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1919/1615 ACS.

Assembly Bill Nos. 1919/1615 ACS establishes a civil procedure for the involuntary commitment of sexually violent predators.

Under existing law, persons are subject to involuntary commitment if they suffer from a "mental illness" as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2). However, a sexually violent predator may not always be characterized as mentally ill. Therefore, this bill establishes an involuntary civil commitment procedure for a sexually violent predator, whom the bill defines as a person who: (1) has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial; and (2) 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 control, care and treatment.

The Department of Corrections will be responsible for the operation of any facility designated for the custody, care and treatment of sexually violent predators, and will provide or arrange for custodial care. The Division of Mental Health Services in the Department of Human Services will provide or arrange for treatment tailored to address the specific needs of sexually violent predators.

The bill provides a 90-day time frame within which the Attorney General must be notified of the release or discharge, as appropriate, of a person who was convicted of a sexually violent offense, found to lack mental competence to stand trial pursuant to N.J.S.2C:4-6 or acquitted by reason of insanity of a sexually violent offense.

The bill defines "sexually violent offense" as:

(1) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying crime is sexual assault; or an attempt to commit any of these enumerated offenses;

(2) a criminal offense with substantially the same elements as any offense enumerated in paragraph (1) entered or imposed under the laws of the United States, this State or another state; or

(3) any offense for which the court 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.

Similar to the provisions of the current civil commitment law applicable to persons suffering from mental illness, section 10 of P.L.1987, c.116 (C.30:4-27.10), the Attorney General may initiate a court proceeding for involuntary commitment under this bill by submitting to the court a clinical certificate for a sexually violent predator, completed by a psychiatrist on the person's treatment team, and the screening certificate which authorized admission of the person to the facility; or two clinical certificates, at least one of which is prepared by a psychiatrist. Also, the Attorney General may apply to the court for an order compelling psychiatric evaluation. In addition, the Attorney General may initiate proceedings for a person scheduled for release upon expiration of a maximum term of incarceration, and in the exercise of the State's authority as *parens patriae*, may initiate proceedings for any person, by filing required submissions with the court.

Upon receipt of these documents, the court shall immediately review them to determine whether there is probable cause to believe that the person is a sexually violent predator in need of involuntary commitment. If so, the court shall issue an order for a final hearing and temporarily authorize commitment to a secure facility designated for the custody, care and treatment of sexually violent predators.

Similar to the current civil commitment law applicable to persons suffering from mental illness, section 12 of P.L.1987, c.116 (C.30:4-27.12), the person shall receive a court hearing within 20 days from the date of the temporary commitment order. At this hearing, the Attorney General is responsible for presenting the case for commitment, and the person must have counsel present.

At least 10 days prior to the final hearing, the Attorney General must cause notice of the hearing to be served upon the person, the person's guardian if any, the person's next-of-kin, the person's attorney, the agency with jurisdiction having custody of the person and any other individual specified by the court. The person's psychiatrist on the treatment team, who has examined the person no more than five calendar days prior to the court hearing, must testify to the clinical basis for the need for involuntary commitment as a sexually violent predator. Other treatment team members, relevant witnesses or next-of-kin are also permitted to testify and the court must transcribe the hearing and arrange for the payment of these expenses.

At this hearing, and any subsequent review court hearing, the person has the following rights:

- The right to be represented by counsel or, if indigent, by appointed counsel;

- The right to be present at the court hearing unless the court determines that because of the person's conduct at the court hearing the proceeding cannot reasonably continue while the person is present;
- The right to present evidence;
- The right to cross-examine witnesses; and
- The right to a hearing in camera.

The bill provides that if the court finds by clear and convincing evidence that the person is in need of involuntary commitment, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for custody, care and treatment of sexually violent predators. Also, the court may order that the person be conditionally discharged in accordance with a plan to facilitate the person's adjustment and reintegration into the community, if the court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with the plan.

The bill permits the court to hold a hearing on whether a person who was found to lack mental competence to stand trial pursuant to N.J.S.2C:4-6 did commit the act charged. The rules of evidence used in a criminal case apply, and if the court finds beyond a reasonable doubt that the person did commit the act charged, the court may proceed to consider commitment of the person under this bill.

Additionally, the bill provides for annual court review hearings of the need for involuntary commitment as a sexually violent predator. The first hearing shall be conducted 12 months from the date of the first hearing, and subsequent hearings annually thereafter. In addition, at any time during involuntary commitment, if the person's treatment team determines that the person's mental condition has so changed that the person is not likely to engage in acts of sexual violence if released, the treatment team shall recommend that the Department of Human Services authorize the person to petition the court for discharge. Also, a person may petition the court for discharge without authorization from the department. In this case, the court shall review the petition to determine whether it is based on facts upon which a court could find that the person's condition had changed, or whether the petition is supported by a professional expert evaluation or report. If the petition fails to satisfy either of these requirements, the court shall deny the petition without a hearing.

Lastly, the bill provides for discharge plans to be prepared by the treatment team and with the participation of the person, and for victim notification of a sexually violent predator's release to be conducted by the Department of Corrections, in conjunction with the Attorney General or county prosecutor and the county Office of Victim and Witness Advocacy.

This bill is part of a package of legislation that was recommended by the Governor's Task Force for the Review of the Treatment of the Criminally Insane.

FISCAL IMPACT:

The bill requires that sexual predators be segregated from other offenders in a secure facility. The Department of Corrections has developed a staffing analysis based on a 150 bed sexual predator unit requiring 69 custody staff positions with expected cost of \$5 million and 26 correctional civilian staff positions costing \$1 million. The Division of Mental Health Services indicates that an additional 44 treatment staff positions costing \$2.3 million would also be required for a total cost (at current cost levels) of \$8.3 million. Initial non-salary operating costs would total \$1.3 million for a total of \$9.6 million annually.

Actual costs are unknown, due to uncertainty as to commitments and the identification of the facility. Presumably, staff would be hired as commitments occur, and selection of the facility will affect custody and staffing patterns. Precise capital construction costs cannot be determined prior to selection of the site. The Office of Legislative Services notes that the cost of constructing one additional prison bed ranges from \$60,000 to \$ 95,000 depending upon the security level of the bed. These cost estimates do not include legal costs.

1 more of the means set forth in subsection e. of this section.

2 g. The Attorney General or county prosecutor shall provide a
3 psychiatrist or physician assessing or examining an inmate pursuant to
4 this section with all information relevant to the inmate's need of
5 involuntary commitment, including information concerning the inmate's
6 condition, history, recent behavior and any recent act or threat. Any
7 person who assesses or examines an inmate pursuant to this section
8 shall provide the Attorney General and county prosecutor with a
9 written report detailing the person's findings and conclusions.

10 h. (1) All information, documents and records concerning the
11 inmate's mental condition or classified as confidential pursuant to
12 regulations of the board, of the Department of Corrections or the
13 Juvenile Justice Commission that are received or provided pursuant to
14 this section or N.J.S.2C:47-5 shall be deemed confidential.

15 (2) Unless authorized or required by court order or except as
16 required in the course of judicial proceedings relating to the inmate's
17 commitment or release, disclosure of such information, documents and
18 records shall be limited to professionals evaluating the inmate's
19 condition pursuant to this section, the Attorney General, county
20 prosecutor and members of their respective staffs as necessary to the
21 performance of duties imposed pursuant to this section.

22 i. Any person acting in good faith who has provided information
23 relevant to an inmate's need of involuntary commitment or as to
24 whether the inmate is a sexually violent predator or has taken good
25 faith steps to assess an inmate's need of involuntary commitment or
26 whether the inmate is a sexually violent predator is immune from civil
27 and criminal liability.

28 (cf: P.L.1995, c.280, s.33)

29

30 18. This act shall take effect 12 months after enactment, but the
31 Commissioners of the Departments of Corrections and Human
32 Services may take such anticipatory administrative action and the
33 Attorney General may issue guidelines necessary for the
34 implementation of this act.

35

36

37 *SPONSORS'* STATEMENT

38

39 This bill establishes a civil procedure for the involuntary
40 commitment of sexually violent predators. Under existing law,
41 persons are subject to involuntary commitment if they suffer from a
42 mental illness as defined in N.J.S.A.30:4-27.2. However, a sexually
43 violent predator may not always be characterized as mentally ill.
44 Therefore, this bill establishes an involuntary civil commitment
45 procedure for a sexually violent predator, which is defined in the bill
46 as a person who: (1) has been convicted, adjudicated delinquent or

1 found not guilty by reason of insanity for commission of a sexually
2 violent offense, or has been charged with a sexually violent offense but
3 found to be incompetent to stand trial; and (2) suffers from a mental
4 abnormality or personality disorder that makes the person likely to
5 engage in acts of sexual violence if not confined in a secure facility for
6 control, care and treatment.

7 The Department of Corrections shall be responsible for the
8 operation of any facility designated for the custody, care and treatment
9 of sexually violent predators, and shall provide or arrange for custodial
10 care. The Division of Mental Health Services in the Department of
11 Human Services shall provide or arrange for treatment which shall be
12 tailored to address the specific needs of sexually violent predators.

13 The bill provides a 90-day time frame within which the Attorney
14 General must be notified of the release or discharge, as appropriate, of
15 a person who was convicted of a sexually violent offense, found to
16 lack mental competence to stand trial pursuant to N.J.S.2C:4-6 or
17 acquitted by reason of insanity of a sexually violent offense.

18 Sexually violent offense is defined in the bill as (1) aggravated
19 sexual assault; sexual assault; aggravated criminal sexual contact;
20 kidnapping pursuant to subparagraph (b) of paragraph (2) of
21 subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder
22 pursuant to paragraph (3) of subsection a. of N.J.S.2C:11-3 if the
23 underlying crime is sexual assault; or an attempt to commit any of
24 these enumerated offenses; (2) a criminal offense with substantially
25 the same elements as any offense enumerated in paragraph (1) entered
26 or imposed under the laws of the United States, this State or another
27 state; or (3) any offense for which the court makes a specific finding
28 on the record that, based on the circumstances of the case, the person's
29 offense should be considered a sexually violent offense.

30 Similar to the provisions of N.J.S.A.30:4-27.10, the Attorney
31 General may initiate a court proceeding for involuntary commitment
32 under this bill by submitting to the court a clinical certificate for a
33 sexually violent predator, completed by a psychiatrist on the person's
34 treatment team, and the screening certificate which authorized
35 admission of the person to the facility; or two clinical certificates, at
36 least one of which is prepared by a psychiatrist. Also, the Attorney
37 General may apply to the court for an order compelling psychiatric
38 evaluation. In addition, the Attorney General may initiate proceedings
39 for a person scheduled for release upon expiration of a maximum term
40 of incarceration, and in the exercise of the State's authority as *parens*
41 *patriae*, may initiate proceedings of any person, by filing required
42 submissions with the court.

43 Upon receipt of these documents, the court shall immediately
44 review them to determine whether there is probable cause to believe
45 that the person is a sexually violent predator in need of involuntary
46 commitment. If so, the court shall issue an order for a final hearing

1 and temporarily authorize commitment to a secure facility designated
2 for the custody, care and treatment of sexually violent predators.

3 Similar to the provisions of N.J.S.A.30:4-27.12, the person shall
4 receive a court hearing within 20 days from the date of the temporary
5 commitment order. At this hearing, the Attorney General is
6 responsible for presenting the case for commitment, and the person
7 must have counsel present.

8 At least 10 days prior to the final hearing, the Attorney General
9 must cause notice of the hearing to be served upon the person, the
10 person's guardian if any, the person's next-of-kin, the person's
11 attorney, the agency with jurisdiction having custody of the person
12 and any other individual specified by the court. The person's
13 psychiatrist on the treatment team, who has examined the person no
14 more than 5 calendar days prior to the court hearing, must testify to
15 the clinical basis for the need for involuntary commitment as a sexually
16 violent predator. Other treatment team members, relevant witnesses
17 or next-of-kin are also permitted to testify and the court must
18 transcribe the hearing and arrange for the payment of these expenses.

19 At this hearing, and any subsequent review court hearing, the
20 person has the following rights:

- 21 • The right to be represented by counsel or, if indigent, by appointed
22 counsel;
- 23 • The right to be present at the court hearing unless the court
24 determines that because of the person's conduct at the court hearing
25 the proceeding cannot reasonably continue while the person is
26 present;
- 27 • The right to present evidence;
- 28 • The right to cross-examine witnesses; and
- 29 • The right to a hearing in camera.

30 The bill provides that if the court finds by clear and convincing
31 evidence that the person is in need of involuntary commitment, it shall
32 issue an order authorizing the involuntary commitment of the person
33 to a facility designated for custody, care and treatment of sexually
34 violent predators. Also, the court may order that the person be
35 conditionally discharged in accordance with a plan to facilitate the
36 person's adjustment and reintegration into the community, if the court
37 finds that the person will not be likely to engage in acts of sexual
38 violence because the person is amenable to and highly likely to comply
39 with the plan.

40 The bill permits the court to hold a hearing on whether a person
41 who was found to lack mental competence to stand trial pursuant to
42 N.J.S.2C:4-6 did commit the act charged. The rules of evidence
43 apply, and if the court finds beyond a reasonable doubt that the person
44 did commit the act charged, the court may proceed to consider
45 commitment of the person under this bill.

46 Also, the bill provides for annual court review hearings of the need

Office of the Governor

NEWS RELEASE

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TRENTON, NJ 08625

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RELEASE: August 12, 1998

Governor Whitman Signs Bills Cracking Down on Sex Offenders

Gov. Christie Whitman today signed a package of bills that will ensure that sex offenders receive appropriate treatment and are not released into the community if there is a likelihood they will repeat their crimes.

"Earlier this year, I made a promise to the citizens of New Jersey. I said that we should make it easier to keep still-dangerous sex offenders away from our children, even after they have served their criminal sentences," the Governor said. "Megan's Law enabled us to keep more than 80 such predators in civil commitment beyond their initial prison terms. It is time to expand that authority."

Known as the New Jersey Sexually Violent Predator Act, S-895, sponsored by Senators Robert Martin (R-Essex/Morris/Passaic) and Anthony Bucco (R-Morris) and Assembly Members Guy Talarico (R-Bergen) and Rose Heck (R-Bergen), allows the state to involuntarily commit sex offenders who suffer from mental abnormalities or personality disorders which make them likely to re-offend.

Currently, only those offenders who meet the legal definition of "mentally ill" may be involuntarily committed.

Under A-2101, sponsored by Assembly Members James Holzapfel (R-Monmouth/Ocean) and Rose Heck (R-Bergen) and Senators John Bennett (R-Monmouth) and Louis Kosco (R-Bergen), sex offenders sent to the ADTC must be willing to participate in sex offender treatment. Those sex offenders who are not amenable to the treatment will not be sentenced to the ADTC.

The bill also requires that current inmates who are no longer participating or cooperating with sex offender treatment be transferred from the center into another Department of Corrections facility.

A-2102, sponsored by Assembly Members James Holzapfel (R-Monmouth/Ocean) and Rose Heck (R-Bergen) and Senators Louis Bassano (R-Essex/Union) and Louis Kosco (R-Bergen), will make it easier to keep a sex offender incarcerated if there is a likelihood that they will violate conditions of parole.

Under the current process, the standard for parole is that the offender must only "be capable of making an acceptable social adjustment in the community." The new standards will be that the offender has had progress in sex offender treatment and that the State Parole Board has determined there is not a reasonable expectation that the offender will violate conditions of parole.

The bills implement some of the recommendations of the Joint Task Force to Study the Adult Diagnostic and Treatment Center.

"When I first arrived in office, I knew that many changes had to be made in order to make New Jersey the safest and best place to start and raise a family," Gov. Whitman said. "To a community, crime is like a virus. If contracted and not attacked aggressively, it will devastate families and businesses alike, as well as weaken New Jersey's image."



1 for involuntary commitment as a sexually violent predator. The first
2 hearing shall be conducted 12 months from the date of the first
3 hearing, and subsequent hearings annually thereafter. In addition, at
4 any time during involuntary commitment, if the person's treatment
5 team determines that the person's mental condition has so changed that
6 the person is not likely to engage in acts of sexual violence if released,
7 the treatment team shall recommend that the Department of Human
8 Services authorize the person to petition the court for discharge.
9 Also, a person may petition the court for discharge without
10 authorization from the department. In this case, the court shall review
11 the petition to determine whether it is based on facts upon which a
12 court could find that the person's condition had changed, or whether
13 the petition is supported by a professional expert evaluation or report.
14 If the petition fails to satisfy either of these requirements, the court
15 shall deny the petition without a hearing.

16 Lastly, the bill provides for discharge plans to be prepared by the
17 treatment team and with the participation of the person, and for victim
18 notification of a sexually violent predator's release to be conducted by
19 the Department of Corrections.

20 This bill is part of a package of legislation that was recommended
21 by the Governor's Task Force for the Review of the Treatment of the
22 Criminally Insane.

1 more of the means set forth in subsection e. of this section.

2 g. The Attorney General or county prosecutor shall provide a
3 psychiatrist or physician assessing or examining an inmate pursuant to
4 this section with all information relevant to the inmate's need of
5 involuntary commitment, including information concerning the inmate's
6 condition, history, recent behavior and any recent act or threat. Any
7 person who assesses or examines an inmate pursuant to this section
8 shall provide the Attorney General and county prosecutor with a
9 written report detailing the person's findings and conclusions.

10 h. (1) All information, documents and records concerning the
11 inmate's mental condition or classified as confidential pursuant to
12 regulations of the board, of the Department of Corrections or the
13 Juvenile Justice Commission that are received or provided pursuant to
14 this section or N.J.S.2C:47-5 shall be deemed confidential.

15 (2) Unless authorized or required by court order or except as
16 required in the course of judicial proceedings relating to the inmate's
17 commitment or release, disclosure of such information, documents and
18 records shall be limited to professionals evaluating the inmate's
19 condition pursuant to this section, the Attorney General, county
20 prosecutor and members of their respective staffs as necessary to the
21 performance of duties imposed pursuant to this section.

22 i. Any person acting in good faith who has provided information
23 relevant to an inmate's need of involuntary commitment or has taken
24 good faith steps to assess an inmate's need of involuntary commitment
25 is immune from civil and criminal liability.

26 (cf: P.L.1995, c.280, s.33)

27

28 4. This act shall take effect .

29

30

31

STATEMENT

32

33 This bill would enact a civil commitment statute for sexually violent
34 offenders modeled on the "Sexually Violent Predator Act" in effect in
35 the State of Kansas. The Kansas statute was recently upheld by the
36 United States Supreme Court in Kansas v. Hendricks, ____ U.S.
37 ____, 117 S.Ct. 2072 (1997).

38 The bill would amend current law concerning the civil commitment
39 of sex offenders by expanding the category of individuals who are
40 deemed to be "in need of involuntary commitment." Currently, sex
41 offenders can be involuntarily committed to a psychiatric facility if
42 they are "mentally ill," and if their mental illness causes them to be
43 dangerous. Under the bill, involuntary commitment would apply not
44 only to those offenders, but also to sexually violent offenders whose
45 mental abnormalities or personality disorders make it likely that they
46 will prey on future victims.

1 In order to achieve this objective, the bill would amend the civil
2 commitment law, N.J.S.A. 30:4-27.2, to add the new term "mental
3 abnormality," and would clarify that persons with this condition are
4 also in need of involuntary commitment. The bill defines "mental
5 abnormality" as a congenital or acquired condition affecting the
6 emotional or volitional capacity which predisposes the person to
7 commit a sex offense in a degree constituting such person as a menace
8 to the health and safety of others.

9 The bill defines "sexually violent offender" as any person who has
10 been convicted of, charged with, adjudicated delinquent, acquitted by
11 reason of insanity or found incompetent to stand trial pursuant to
12 N.J.S. 2C:4-6 for the commission of a sex offense and who suffers
13 from a mental abnormality or personality disorder which makes the
14 person likely to engage in sexually violent acts, if not confined to a
15 secure facility.

16 The sex offenses included under the bill's purview include the
17 following:

18 (1) Aggravated sexual assault or sexual assault pursuant to
19 N.J.S.2C:14-2; aggravated criminal sexual contact or criminal sexual
20 contact pursuant to N.J.S.2C:14-3; kidnapping pursuant to
21 N.J.S.2C:13-1; luring or enticing pursuant to section 1 of P.L.1993,
22 c.291 (C.2C:13-6); endangering the welfare of a child by engaging in
23 sexual conduct which would impair or debauch the morals of the child
24 pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare
25 of a child pursuant to subsection b. of N.J.S.2C:24-4; criminal restraint
26 pursuant to N.J.S.2C:13-2; or false imprisonment pursuant to
27 N.J.S.2C:13-3; or

28 (2) Any offense under the laws of the United States, this State or
29 any other state which is substantially equivalent.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 895

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED MAY 21, 1998

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

Senator ANTHONY R. BUCCO

District 25 (Morris)

Co-Sponsored by:

**Senator Kosco, Assemblyman Talarico, Assemblywomen Heck, Crecco,
Assemblyman Bateman, Assemblywoman Buono, Assemblymen Kramer,
Gregg, Kelly and Assemblywoman Murphy**

SYNOPSIS

"New Jersey Sexually Violent Predator Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Law and Public Safety Committee.

(Sponsorship Updated As Of: 6/26/1998)

1 AN ACT establishing a civil procedure for the involuntary commitment
2 of sexually violent predators, supplementing Title 30 of the
3 Revised Statutes and amending N.J.S.2C:47-5 and P.L.1994,
4 c.134.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) This act shall be known and may be cited as the
10 "New Jersey Sexually Violent Predator Act."

11

12 2. (New section) The Legislature finds and declares that:

13 a. Certain individuals who commit sex offenses suffer from mental
14 abnormalities or personality disorders which make them likely to
15 engage in repeat acts of predatory sexual violence if not treated for
16 their mental conditions.

17 b. Under the existing involuntary commitment procedure, persons
18 are subject to commitment if they are mentally ill and dangerous to
19 self, others or property. "Mental illness" is a current, substantial
20 disturbance of thought, mood, perception or orientation which
21 significantly impairs judgment, capacity to control behavior or capacity
22 to recognize reality, which causes the person to be dangerous to self,
23 others or property. The nature of the mental condition from which a
24 sexually violent predator may suffer may not always lend itself to
25 characterization under the existing statutory standard, although civil
26 commitment may nonetheless be warranted due to the danger the
27 person may pose to others as a result of the mental condition.

28 c. Therefore, it is necessary to modify the involuntary civil
29 commitment process in recognition of the need for commitment of
30 those sexually violent predators who pose a danger to others should
31 they be returned to society.

32 d. Moreover, because of the nature of the mental conditions from
33 which sexually violent predators suffer and the danger they present, it
34 is necessary to house involuntarily committed sexually violent
35 predators in an environment separate from persons committed under
36 P.L.1987, c.116 (C.30:4-27.1 et seq.) or otherwise confined.

37

38 3. (New section) As used in this act:

39 "Agency with jurisdiction" means the agency which releases upon
40 lawful order or authority a person who is serving a sentence or term
41 of confinement, or is otherwise being detained or maintained in
42 custody. This term includes the Department of Corrections or a county
43 correctional facility, the Juvenile Justice Commission or a county

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 juvenile detention facility, and the Department of Human Services.

2 "Attorney General" means the Attorney General or a county
3 prosecutor to whom the Attorney General has delegated authority
4 under this act.

5 "Clinical certificate for a sexually violent predator" means a form
6 prepared by the Division of Mental Health Services in the Department
7 of Human Services and approved by the Administrative Office of the
8 Courts, that is completed by the psychiatrist or other physician who
9 has examined the person who is subject to commitment within three
10 days of presenting the person for admission to a facility for treatment,
11 and which states that the person is a sexually violent predator in need
12 of involuntary commitment. The form shall also state the specific facts
13 upon which the examining physician has based that conclusion and
14 shall be certified in accordance with the Rules Governing the Courts
15 of the State of New Jersey. A clinical certificate for a sexually violent
16 predator may not be executed by an individual who is a relative by
17 blood or marriage to the person who is being examined.

18 "Likely to engage in acts of sexual violence" means the propensity
19 of a person to commit acts of sexual violence is of such a degree as to
20 pose a threat to the health and safety of others.

21 "Mental abnormality" means a mental condition that affects a
22 person's emotional, cognitive or volitional capacity in a manner that
23 predisposes that person to commit acts of sexual violence.

24 "Person" means an individual 18 years of age or older who is a
25 potential or actual subject of proceedings under this act.

26 "Psychiatrist" means a physician who has completed the training
27 requirements of the American Board of Psychiatry and Neurology.

28 "Sexually violent offense" means:

29 (a) aggravated sexual assault; sexual assault; aggravated criminal
30 sexual contact; kidnapping pursuant to subparagraph (b) of paragraph
31 (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony
32 murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying
33 crime is sexual assault; an attempt to commit any of these enumerated
34 offenses; or a criminal offense with substantially the same elements as
35 any offense enumerated above, entered or imposed under the laws of
36 the United States, this State or another state; or

37 (b) any offense for which the court makes a specific finding on the
38 record that, based on the circumstances of the case, the person's
39 offense should be considered a sexually violent offense.

40 "Sexually violent predator" means a person who has been
41 convicted, adjudicated delinquent or found not guilty by reason of
42 insanity for commission of a sexually violent offense, or has been
43 charged with a sexually violent offense but found to be incompetent to
44 stand trial, and suffers from a mental abnormality or personality
45 disorder that makes the person likely to engage in acts of sexual
46 violence if not confined in a secure facility for control, care and

1 treatment.

2 "Treatment team" means the individuals, agencies or firms which
3 provide treatment, supervision or other services at a facility designated
4 for the custody, care and treatment of sexually violent predators.

5

6 4. (New section) a. When it appears that a person may meet the
7 criteria of a sexually violent predator as defined in this act, the agency
8 with jurisdiction shall give written notice to the Attorney General 90
9 days, or as soon as practicable, prior to:

10 (1) the anticipated release from total confinement of a person
11 who has been convicted of or adjudicated delinquent for a sexually
12 violent offense;

13 (2) any commitment status review hearing at which the Department
14 of Human Services intends to recommend discharge or believes that
15 discharge may be likely, for a person who has been civilly committed
16 pursuant to N.J.S.2C:4-8 following acquittal by reason of insanity for
17 a sexually violent offense; or

18 (3) any hearing at which the Department of Human Services
19 intends to recommend discharge or believes that discharge may be
20 likely, for any person civilly committed based upon a determination
21 that the person lacked mental competence to stand trial pursuant to
22 N.J.S.2C:4-6, if the person had been charged with a sexually violent
23 offense.

24 b. When such notice is given, the agency with jurisdiction shall
25 provide the Attorney General with all information relevant to a
26 determination of whether the person may be a sexually violent
27 predator, including, without regard to classification as confidential
28 pursuant to regulations of the agency with jurisdiction, any parole
29 report, psychological and medical records, any statement of the
30 reasons for denial of parole and a statement from the agency with
31 jurisdiction of the reasons for its determination that the person may be
32 a sexually violent predator.

33 c. All information, documents and records concerning the person's
34 mental condition or which are classified as confidential pursuant to
35 statute or regulations of the agency with jurisdiction that are received
36 or provided pursuant to this section shall be deemed confidential.
37 Unless authorized or required by court order or except as required in
38 the course of judicial proceedings relating to the person's commitment
39 or release, disclosure of such information, documents and records shall
40 be limited to a professional evaluating the person's condition pursuant
41 to this section, the Attorney General and a member of the Attorney
42 General's staff as necessary to the performance of duties imposed
43 pursuant to this section and, if the person is committed, to the staff at
44 the institution providing treatment.

45 d. Any individual acting in good faith who has provided
46 information relevant to a person's need for involuntary commitment

1 under this act or has taken steps in good faith to assess a person's need
2 of involuntary commitment under this act is immune from civil or
3 criminal liability.

4 e. The provisions of this section are not jurisdictional, and failure
5 to comply with them in no way prevents the Attorney General from
6 initiating a proceeding against a person otherwise subject to the
7 provisions of this act, nor do the provisions of this act in any way
8 foreclose a proceeding under the provisions of P.L.1987, c.116
9 (C.30:4-27.1 et seq.) for the involuntary commitment of any person
10 charged with or convicted of a sexual offense.

11

12 5. (New section) a. The Attorney General may initiate a court
13 proceeding for involuntary commitment under this act of a person who
14 is currently a patient in a short-term care facility, State or county
15 psychiatric facility or special psychiatric hospital, by submitting to the
16 court a clinical certificate for a sexually violent predator completed by
17 a psychiatrist at the facility at which the person is a patient and the
18 screening certificate which authorized admission of the person to the
19 facility; but both certificates shall not be signed by the same
20 psychiatrist unless the psychiatrist has made a reasonable but
21 unsuccessful attempt to have another psychiatrist conduct the
22 evaluation and execute the certificate.

23 b. If civil commitment is not initiated pursuant to subsection a. of
24 this section, the Attorney General may initiate a court proceeding for
25 the involuntary commitment of a person by the submission to the court
26 of two clinical certificates for a sexually violent predator, at least one
27 of which is prepared by a psychiatrist. The person shall not be
28 involuntarily committed pursuant to this act before the court issues a
29 temporary court order. When the Attorney General determines that the
30 public safety requires initiation of a proceeding pursuant to this
31 subsection, the Attorney General may apply to the court for an order
32 compelling the psychiatric evaluation of the person. The court shall
33 grant the Attorney General's application if the court finds that there is
34 reasonable cause to believe that the person named in the petition is a
35 sexually violent predator.

36 c. The Attorney General may initiate a court proceeding for
37 involuntary commitment under this act of an inmate who is scheduled
38 for release upon expiration of a maximum term of incarceration by
39 submission to the court of two clinical certificates for a sexually
40 violent predator, at least one of which is prepared by a psychiatrist.

41 d. The Attorney General, in exercise of the State's authority as
42 *parens patriae*, may initiate a court proceeding for the involuntary
43 commitment of any person in accordance with the procedures set forth
44 in this section by filing the required submission with the court in the
45 jurisdiction in which the person whose commitment is sought is
46 located.

1 e. Any individual who is a relative by blood or marriage of the
2 person being examined who executes a clinical certificate for a
3 sexually violent predator, or any individual who signs such a clinical
4 certificate for any purpose or motive other than for purposes of care,
5 treatment and confinement of a person in need of involuntary
6 commitment, shall be guilty of a crime of the fourth degree.

7 f. Upon receiving these documents, the court shall immediately
8 review them in order to determine whether there is probable cause to
9 believe that the person is a sexually violent predator.

10 g. If the court finds that there is probable cause to believe that the
11 person is a sexually violent predator in need of involuntary
12 commitment, it shall issue an order setting a date for a final hearing
13 and authorizing temporary commitment to a secure facility designated
14 for the custody, care and treatment of sexually violent predators
15 pending the final hearing. In no event shall the person be released from
16 confinement prior to the final hearing.

17 h. In the case of a person committed to a short-term care facility
18 or special psychiatric hospital, after the facility's treatment team
19 conducts a mental and physical examination, administers appropriate
20 treatment and prepares a discharge assessment, the facility shall
21 transfer the person to a secure facility designated for the custody, care
22 and treatment of sexually violent predators pending the final hearing
23 upon providing the person, the person's guardian if any, the person's
24 next-of-kin and the person's attorney 24 hours advance notice of the
25 pending transfer. Such transfer is to be accomplished in a manner
26 which will give the receiving facility adequate time to examine the
27 person, become familiar with the person's behavior and condition, and
28 prepare for the hearing.

29
30 6. (New section) a. A person who is involuntarily committed
31 pursuant to section 5 of this act shall receive a court hearing with
32 respect to the issue of continuing need for involuntary commitment as
33 a sexually violent predator within 20 days from the date of the
34 temporary commitment order.

35 b. The Attorney General is responsible for presenting the case for
36 the person's involuntary commitment as a sexually violent predator to
37 the court.

38 c. A person subject to involuntary commitment shall have counsel
39 present at the hearing and shall not be permitted to appear at the
40 hearing without counsel.

41
42 7. (New section) a. At least 10 days prior to a court hearing, the
43 Attorney General shall cause notice of the court hearing to be served
44 upon the person, the person's guardian if any, the person's next-of-kin,
45 the person's attorney, the agency with jurisdiction having custody of
46 the person and any other individual specified by the court. The notice

1 shall contain the date, time and location of the court hearing. The
2 person and the person's attorney shall also receive copies of the
3 clinical certificates for a sexually violent predator and supporting
4 documents, the temporary court order and a statement of the person's
5 rights at the court hearing.

6 b. A psychiatrist on the person's treatment team who has
7 conducted a personal examination of the person as close to the court
8 hearing date as possible, but in no event more than five calendar days
9 prior to the court hearing, shall testify at the hearing to the clinical
10 basis for the need for involuntary commitment as a sexually violent
11 predator. Other members of the person's treatment team and any other
12 witness with relevant information offered by the person or the
13 Attorney General shall also be permitted to testify at the hearing.

14 c. The person's next-of-kin may attend and, if the court so
15 determines, may testify at the court hearing.

16 d. The court shall transcribe the court hearing and arrange for the
17 payment of expenses related thereto in the same manner as for other
18 court proceedings.

19

20 8. (New section) A person subject to involuntary commitment as
21 a sexually violent predator has the following rights at a court hearing
22 pursuant to section 7 and any subsequent review court hearing:

23 a. The right to be represented by counsel or, if indigent, by
24 appointed counsel;

25 b. The right to be present at the court hearing unless the court
26 determines that because of the person's conduct at the court hearing
27 the proceeding cannot reasonably continue while the person is present;

28 c. The right to present evidence;

29 d. The right to cross-examine witnesses; and

30 e. The right to a hearing in camera.

31

32 9. (New section) a. If the court finds by clear and convincing
33 evidence that the person needs continued involuntary commitment as
34 a sexually violent predator, it shall issue an order authorizing the
35 involuntary commitment of the person to a facility designated for the
36 custody, care and treatment of sexually violent predators. The court
37 shall also schedule a subsequent court hearing pursuant to section 12
38 of this act.

39 b. If the court finds that the person is not a sexually violent
40 predator, the court shall so order. A person who is serving a term of
41 incarceration shall be returned to the appropriate State, county or local
42 authority to complete service of the term of incarceration imposed
43 until released in accordance with law, and any other person shall be
44 discharged by the facility within 48 hours of the court's verbal order
45 or by the end of the next working day, whichever is longer, with a
46 discharge plan prepared pursuant to section 14 of this act.

1 c. (1) If the Department of Human Services recommends
2 conditional discharge of the person and the court finds that the person
3 will not be likely to engage in acts of sexual violence because the
4 person is amenable to and highly likely to comply with a plan to
5 facilitate the person's adjustment and reintegration into the community
6 so as to render involuntary commitment as a sexually violent predator
7 unnecessary for that person, the court may order that the person be
8 conditionally discharged in accordance with such plan.

9 (2) Conditions imposed pursuant to this subsection shall include
10 those recommended by the person's treatment team and developed
11 with the participation of the person and shall be approved by the
12 Department of Human Services. Conditions imposed on the person
13 shall be specific and shall be for the purpose of ensuring that the
14 person participates in necessary treatment and that the person does not
15 represent a risk to public safety. If the court imposes conditions for a
16 period exceeding six months, the court shall provide for a review
17 hearing on a date the court deems appropriate but in no event later
18 than six months from the date of the order. The review hearing shall
19 be conducted in the manner provided in this section, and the court may
20 impose any order authorized pursuant to this section.

21 (3) A designated staff member on the person's treatment team shall
22 notify the court if the person fails to meet the conditions of the
23 discharge plan, and the court shall issue an order directing that the
24 person be taken to a facility designated for the custody, care and
25 treatment of sexually violent predators for an assessment. The court
26 shall determine, in conjunction with the findings of the assessment, if
27 the person needs to be returned to custody and, if so, the person shall
28 be returned to the designated facility for the custody, care and
29 treatment of sexually violent predators. The court shall hold a hearing
30 within 20 days of the day the person was returned to custody to
31 determine if the order of conditional discharge should be vacated.

32 d. Notwithstanding the provisions of this section, or any provision
33 of sections 12, 13 or 14 of this act to the contrary, no person
34 committed while serving a term of incarceration shall be discharged by
35 the court prior to the date on which the person's maximum term would
36 have expired had he not been committed. If the court determines that
37 the person's mental condition has so changed that the person is safe to
38 be at large, the court shall order that the person be returned to the
39 appropriate State, county or local authority to complete service of the
40 term of incarceration imposed until released in accordance with law,
41 and the person shall be given day for day credit for all time during
42 which the person was committed.

43 e. Notwithstanding the provisions of this section, or any provision
44 of sections 12, 13 or 14 of this act to the contrary, no person
45 committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal
46 charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning

1 lack of mental competence to stand trial shall be discharged by the
2 court unless the prosecuting attorney in the case receives prior notice
3 and an opportunity to be heard.

4
5 10. (New section) If a person who has been civilly committed
6 based upon a determination that the person lacked mental competence
7 to stand trial pursuant to N.J.S.2C:4-6 is about to be released, and the
8 person's involuntary commitment is sought pursuant to this act, the
9 court shall first hear evidence and determine whether the person did
10 commit the act charged.

11 a. The rules of evidence applicable in criminal cases shall apply,
12 and all constitutional rights available to a defendant at a criminal trial,
13 other than the right to a trial by jury and the right not to be tried while
14 incompetent, shall apply.

15 b. After hearing evidence on this issue, the court shall make
16 specific findings on whether the person did commit the act charged,
17 the extent to which the person's lack of mental competence affected
18 the outcome of the hearing, including its effect on the person's ability
19 to consult with and assist counsel and to testify on the person's own
20 behalf, the extent to which the evidence could be reconstructed
21 without the assistance of the person and the strength of the
22 prosecution's case.

23 c. If, after the conclusion of the hearing on this issue, the court
24 finds beyond a reasonable doubt that the person did commit the act
25 charged, the court shall enter a final order, appealable by the person,
26 on that issue and may proceed to consider whether the person should
27 be committed pursuant to this act.

28
29 11. (New section) a. The Department of Corrections shall be
30 responsible for the operation of any facility designated for the custody,
31 care and treatment of sexually violent predators, and shall provide or
32 arrange for custodial care of persons committed pursuant to this act.
33 Except as may be provided pursuant to subsection c. of section 9 of
34 this act, a person committed pursuant to this act shall be kept in a
35 secure facility and shall be housed and managed separately from
36 offenders in the custody of the Department of Corrections and, except
37 for occasional instances of supervised incidental contact, shall be
38 segregated from such offenders.

39 b. The Division of Mental Health Services in the Department of
40 Human Services shall provide or arrange for treatment for a person
41 committed pursuant to this act. Such treatment shall be appropriately
42 tailored to address the specific needs of sexually violent predators.

43 c. Appropriate representatives of the Department of Corrections
44 and the Department of Human Services shall participate in an
45 interagency oversight board to facilitate the coordination of the
46 policies and procedures of the facility.

1 12. (New section) A person committed under this act shall be
2 afforded an annual court review hearing of the need for involuntary
3 commitment as a sexually violent predator. The review hearing shall
4 be conducted in the manner provided in section 7 of this act. If the
5 court determines at a review hearing that involuntary commitment as
6 a sexually violent predator shall be continued, it shall execute a new
7 order. The court shall conduct the first review hearing 12 months from
8 the date of the first hearing, and subsequent review hearings annually
9 thereafter. The court may schedule additional review hearings but,
10 except in extraordinary circumstances, not more often than once every
11 30 days.

12

13 13. (New section) a. At any time during the involuntary
14 commitment of a person under this act, if the person's treatment team
15 determines that the person's mental condition has so changed that the
16 person is not likely to engage in acts of sexual violence if released, the
17 treatment team shall recommend that the Department of Human
18 Services authorize the person to petition the court for discharge from
19 involuntary commitment status. The Department of Human Services
20 shall notify the Attorney General immediately upon providing such
21 authorization. If a discharge plan has not been developed pursuant to
22 section 14 of this act, it shall be developed forthwith.

23 b. The person shall serve the authorized petition for discharge
24 upon the committing court and the Attorney General. The Attorney
25 General may obtain an independent clinical evaluation of the person,
26 which shall be performed within 15 days of receipt by the Attorney
27 General of the authorized petition for discharge. If, within 15 days of
28 receipt of such authorized petition or upon completion of an
29 independent clinical evaluation, if any, the Attorney General files a
30 request for a hearing on the issue of continuing need for commitment
31 and serves notice of that request, in accordance with the provisions of
32 section 7 of this act, the court shall schedule a hearing on the issue.
33 The hearing shall be conducted in the manner provided in section 9 of
34 this act.

35 c. If the person committed pursuant to this act had at the time of
36 such commitment been confined pursuant to an order entered under
37 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
38 insanity or under N.J.S.2C:4-6 concerning lack of mental competence
39 to stand trial, the Attorney General shall provide written notice to the
40 prosecutor of the person's authorized petition for discharge from
41 involuntary commitment status. If, within five days of receipt of such
42 notice, the prosecutor files a request for a hearing on the issue of
43 continuing need for commitment and serves notice of that request, in
44 accordance with the provisions of section 7 of this act, the court shall
45 schedule a hearing on the issue. The hearing shall be conducted in the
46 manner provided in section 9 of this act.

1 d. Nothing in this act shall prohibit a person from filing a petition
2 for discharge from involuntary commitment status without
3 authorization from the Department of Human Services. Upon receipt
4 of such a petition, the court shall review the petition to determine:

5 (1) whether the petition contains facts upon which the court
6 could find that the condition of the person has so changed from the
7 time of the filing of the person's prior petition that a hearing is
8 warranted, or

9 (2) whether the petition is supported by a professional expert
10 evaluation or report stating that the person's mental condition has so
11 changed that the person is not likely to engage in acts of sexual
12 violence if released, which evidence had not been provided to the
13 court in its prior annual review.

14 If the petition fails to satisfy either of these requirements, the court
15 shall deny the petition without a hearing.

16
17 14. (New section) A person discharged by the court shall have a
18 discharge plan prepared by the treatment team at the facility
19 designated for the custody, care and treatment of sexually violent
20 predators, pursuant to this section. The treatment team shall give the
21 person an opportunity to participate in the formulation of the
22 discharge plan.

23
24 15. (New section) In addition to any other information required to
25 be released under this act, prior to the release of a person committed
26 under this act, the Department of Corrections shall give written notice
27 of the person's release to the Attorney General or the prosecutor of the
28 county in which the person was prosecuted for the sexually violent
29 offense which rendered the person subject to commitment under this
30 act, depending on which office prosecuted the person for the sexually
31 violent offense. Upon receipt of such notice, the county prosecutor or
32 Attorney General, as the case may be, shall notify the Office of Victim
33 and Witness Advocacy of the county in which the person was
34 prosecuted and that office shall use any reasonable means available to
35 it to give notice of the person's release to the victim of the sexually
36 violent offense or the victim's nearest relative if the sexually violent
37 offense resulted in death, which notice shall be in accordance with the
38 provisions of section 6 of P.L.1985, c.404 (C.52:4B-44). The notice
39 required under this section shall be given only if a request for such
40 notification has been made by the victim or the victim's nearest
41 relative, as the case may be, to the county prosecutor or Attorney
42 General, as the case may be, at the time the person was sentenced or
43 committed. Failure to notify shall not be a reason for postponement
44 of release. Nothing in this subsection shall create a cause of action
45 against the State, county or any employee of the State or county acting

1 within the scope of the employee's employment as a result of the
2 failure to notify under this act.

3
4 16. N.J.S.2C:47-5 is amended to read as follows:

5 2C:47-5. a. Any person committed to confinement under the
6 terms of this chapter shall be released under parole supervision when
7 it shall appear to the satisfaction of the State Parole Board, after
8 recommendation by a special classification review board appointed by
9 the commissioner that such person is capable of making an acceptable
10 social adjustment in the community.

11 b. The Chief Executive Officer of the Adult Diagnostic and
12 Treatment Center shall report in writing at least semiannually to the
13 special classification review board concerning the physical and
14 psychological condition of such person with a recommendation as to
15 his continued confinement or consideration for release on parole.

16 c. Any person paroled pursuant to this section shall be subject to
17 the provisions of Title 30 of the Revised Statutes governing parole and
18 the regulations promulgated pursuant thereto.

19 d. When a person confined under the terms of this chapter has not
20 been paroled in accordance with subsection a. of this section and is
21 scheduled for release, not less than 90 days prior to the date of the
22 person's scheduled release the Chief Executive Officer shall:

23 (1) Notify the Attorney General and the prosecutor of the county
24 from which the person was committed of the scheduled release;

25 (2) Provide the Attorney General and the county prosecutor with
26 the officer's opinion as to whether the person may be "in need of
27 involuntary commitment" within the meaning of section 2 of P.L.1987,
28 c.116 (C.30:4-27.2) and as to whether the person may be a "sexually
29 violent predator" within the meaning of section 3 of P.L. , c. (C.)
30 (pending before the Legislature as this bill); and

31 (3) Without regard to classification as confidential pursuant to
32 regulations of the State Parole Board or the Department of
33 Corrections, provide the Attorney General and county prosecutor with
34 all reports, records and assessments relevant to determining whether
35 the person is "in need of involuntary commitment" and whether the
36 person is a "sexually violent predator" . All information received shall
37 be deemed confidential and shall be disclosed only as provided in
38 section 4 of P.L.1994, c.134 (C.30:4-82.4).

39 e. Upon receipt of the notice, advice and information required by
40 subsection d. of this section, the Attorney General or county
41 prosecutor shall proceed as provided in section 4 of P.L.1994, c.134
42 (C.30:4-82.4) or section 5 of P.L. c. (C.)(pending before the
43 Legislature as this bill), as appropriate.

44 f. Notwithstanding any provisions of this section to the contrary,
45 a person confined for life at the Adult Diagnostic and Treatment

1 Center, for a crime whose circumstances conform to those enumerated
2 in paragraph (3) of subsection b. of N.J.S.2C:11-3, shall not be eligible
3 for parole or a deduction for commutation or work credits.

4 (cf: P.L.1997, c.60, s.2)

5
6 17. Section 4 of P.L.1994, c.134 (C.30:4-82.4) is amended to read
7 as follows:

8 4. a. In order to ensure that adult and juvenile inmates who are
9 dangerous to themselves or others because of mental illness and who
10 are "in need of involuntary commitment" within the meaning of section
11 2 of P.L.1987, c.116 (C.30:4-27.2) or who are "sexually violent
12 predators" within the meaning of section 3 of P.L. , c. (C.)
13 (pending before the Legislature as this bill) , are not released without
14 appropriate supervision and treatment, the board, the Commissioner
15 of the Department of Corrections, the Attorney General, the Juvenile
16 Justice Commission established pursuant to section 2 of P.L.1995,
17 c.284 (C.52:17B-170) and county prosecutors shall follow the
18 procedures set forth in this section.

19 b. When an adult or juvenile inmate is scheduled for release due
20 to expiration of the inmate's maximum term, the commissioner or the
21 Juvenile Justice Commission shall notify the Attorney General and the
22 prosecutor of the county from which the person was committed if:

23 (1) The adult inmate's term includes a sentence imposed for
24 conviction of aggravated sexual assault, sexual assault or aggravated
25 criminal sexual contact and the court imposing sentence found that the
26 offender's conduct was characterized by a pattern of repetitive,
27 compulsive behavior; **[or]**

28 (2) The parole board or the superintendent of the facility in which
29 the inmate has been confined has advised the commissioner or the
30 Juvenile Justice Commission that the conduct of the inmate during the
31 period of confinement, the inmate's mental condition or the inmate's
32 past history indicates that the inmate may be "in need of involuntary
33 commitment" within the meaning of section 2 of P.L.1987, c.116
34 (C.30:4-27.2) ; or

35 (3) The inmate's term includes a sentence imposed for conviction
36 of a "sexually violent offense" as defined in section 3 of P.L. , c.
37 (C.)(pending before the Legislature as this bill) .

38 c. Notice required by subsection b. shall be given no less than 90
39 days before the date on which the inmate's maximum term is scheduled
40 to expire.

41 d. When such notice is given, the board, the Juvenile Justice
42 Commission or the commissioner shall provide the Attorney General
43 and county prosecutor with all information relevant to a determination
44 of whether the inmate may be "in need of involuntary commitment" or
45 may be a "sexually violent predator" , including, without regard to
46 classification as confidential pursuant to regulations of the board, of

1 the Department of Corrections or the Juvenile Justice Commission,
2 any parole report, psychological and medical records, any statement
3 of the reasons for denial of parole and, if applicable, a statement of the
4 reasons for the determination that the inmate may be "in need of
5 involuntary commitment" or may be a "sexually violent predator" .

6 e. If the Attorney General or county prosecutor determines, on
7 the basis of the information provided pursuant to this section or
8 N.J.S.2C:47-5, that the inmate may be "in need of involuntary
9 commitment" or may be a "sexually violent predator" , the
10 Commissioner of Corrections or the Juvenile Justice Commission,
11 upon request of the Attorney General or county prosecutor shall:

12 (1) Permit persons qualified to execute clinical certificates
13 necessary for civil commitment to examine the inmate in the institution
14 in which he is confined; or

15 (2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2), arrange
16 for persons qualified to execute clinical certificates necessary for civil
17 commitment to examine the inmate.

18 f. In the interests of the public safety and the well-being of the
19 inmate, the Attorney General or county prosecutor may exercise
20 discretion to obtain an assessment of the inmate's condition by one or
21 more of the means set forth in subsection e. of this section.

22 g. The Attorney General or county prosecutor shall provide a
23 psychiatrist or physician assessing or examining an inmate pursuant to
24 this section with all information relevant to the inmate's need of
25 involuntary commitment, including information concerning the inmate's
26 condition, history, recent behavior and any recent act or threat. Any
27 person who assesses or examines an inmate pursuant to this section
28 shall provide the Attorney General and county prosecutor with a
29 written report detailing the person's findings and conclusions.

30 h. (1) All information, documents and records concerning the
31 inmate's mental condition or classified as confidential pursuant to
32 regulations of the board, of the Department of Corrections or the
33 Juvenile Justice Commission that are received or provided pursuant to
34 this section or N.J.S.2C:47-5 shall be deemed confidential.

35 (2) Unless authorized or required by court order or except as
36 required in the course of judicial proceedings relating to the inmate's
37 commitment or release, disclosure of such information, documents and
38 records shall be limited to professionals evaluating the inmate's
39 condition pursuant to this section, the Attorney General, county
40 prosecutor and members of their respective staffs as necessary to the
41 performance of duties imposed pursuant to this section.

42 i. Any person acting in good faith who has provided information
43 relevant to an inmate's need of involuntary commitment or as to
44 whether the inmate is a sexually violent predator or has taken good
45 faith steps to assess an inmate's need of involuntary commitment or
46 whether the inmate is a sexually violent predator is immune from civil

1 and criminal liability.

2 (cf: P.L. 1995, c.280, s.33)

3

4 18. This act shall take effect one year after enactment but, prior to
5 the effective date, the Commissioners of the Departments of
6 Corrections and Human Services may take such anticipatory
7 administrative action and the Attorney General may issue guidelines
8 necessary for the implementation of this act.

SENATE, No. 895

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 23, 1998

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

Senator ANTHONY R. BUCCO

District 25 (Morris)

Co-Sponsored by:

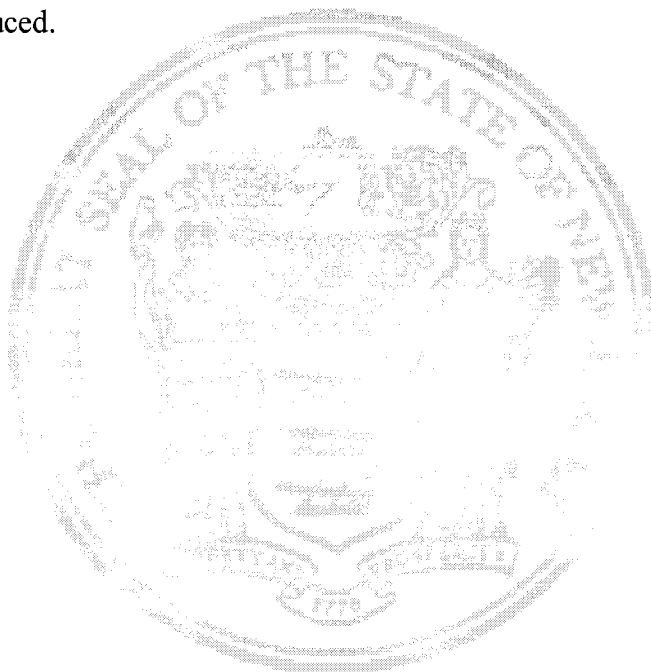
Senator Kosco

SYNOPSIS

"New Jersey Sexually Violent Predator Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/28/1998)

1 AN ACT establishing a civil procedure for the involuntary commitment
2 of sexually violent predators, supplementing Title 30 of the Revised
3 Statutes and amending N.J.S.2C:47-5 and P.L.1994, c.134.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as the
9 "New Jersey Sexually Violent Predator Act."

10
11 2. (New section) The Legislature finds and declares that:

12 a. Certain individuals who commit sex offenses suffer from mental
13 abnormalities or personality disorders which make them likely to
14 engage in repeat acts of predatory sexual violence if not treated for
15 their mental conditions.

16 b. Under the existing involuntary commitment procedure, persons
17 are subject to commitment if they are mentally ill and dangerous to
18 self, others or property. "Mental illness" is a current, substantial
19 disturbance of thought, mood, perception or orientation which
20 significantly impairs judgment, capacity to control behavior or capacity
21 to recognize reality, which causes the person to be dangerous to self,
22 others or property. The nature of the mental condition from which a
23 sexually violent predator may suffer may not always lend itself to
24 characterization under the existing statutory standard, although civil
25 commitment may nonetheless be warranted due to the danger the
26 person may pose to others as a result of the mental condition.

27 c. Therefore, it is necessary to modify the involuntary civil
28 commitment process in recognition of the need for commitment of
29 those sexually violent predators who pose a danger to others should
30 they be returned to society.

31 d. Moreover, because of the nature of the mental conditions from
32 which sexually violent predators suffer and the danger they present, it
33 is necessary to house involuntarily committed sexually violent
34 predators in an environment separate from persons committed under
35 P.L.1987, c.116 (C.30:4-27.1 et seq.) or otherwise confined.

36
37 3. (New section) As used in this act:

38 "Agency with jurisdiction" means the agency which releases upon
39 lawful order or authority a person who is serving a sentence or term
40 of confinement, or is otherwise being detained or maintained in
41 custody. This term includes the Department of Corrections or a county
42 correctional facility, the Juvenile Justice Commission or a county
43 juvenile detention facility, and the Department of Human Services.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Attorney General" means the Attorney General or a county
2 prosecutor to whom the Attorney General has delegated authority
3 under this act.

4 "Clinical certificate for a sexually violent predator" means a form
5 prepared by the Division of Mental Health Services in the Department
6 of Human Services and approved by the Administrative Office of the
7 Courts, that is completed by the psychiatrist or other physician who
8 has examined the person who is subject to commitment within three
9 days of presenting the person for admission to a facility for treatment,
10 and which states that the person is a sexually violent predator in need
11 of involuntary commitment. The form shall also state the specific facts
12 upon which the examining physician has based that conclusion and
13 shall be certified in accordance with the Rules Governing the Courts
14 of the State of New Jersey. A clinical certificate for a sexually violent
15 predator may not be executed by an individual who is a relative by
16 blood or marriage to the person who is being examined.

17 "Likely to engage in acts of sexual violence" means the propensity
18 of a person to commit acts of sexual violence is of such a degree as to
19 pose a threat to the health and safety of others.

20 "Mental abnormality" means a mental condition that affects a
21 person's emotional, cognitive or volitional capacity in a manner that
22 predisposes that person to commit acts of sexual violence.

23 "Person" means an individual 18 years of age or older who is a
24 potential or actual subject of proceedings under this act.

25 "Psychiatrist" means a physician who has completed the training
26 requirements of the American Board of Psychiatry and Neurology.

27 "Sexually violent offense" means:

28 (a) aggravated sexual assault; sexual assault; aggravated criminal
29 sexual contact; kidnapping pursuant to subparagraph (b) of paragraph
30 (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony
31 murder pursuant to paragraph (3) of subsection a. of N.J.S.2C:11-3 if
32 the underlying crime is sexual assault; an attempt to commit any of
33 these enumerated offenses; or a criminal offense with substantially the
34 same elements as any offense enumerated above, entered or imposed
35 under the laws of the United States, this State or another state; or

36 (b) any offense for which the court makes a specific finding on the
37 record that, based on the circumstances of the case, the person's
38 offense should be considered a sexually violent offense.

39 "Sexually violent predator" means a person who: has been
40 convicted, adjudicated delinquent or found not guilty by reason of
41 insanity for commission of a sexually violent offense, or has been
42 charged with a sexually violent offense but found to be incompetent to
43 stand trial; and suffers from a mental abnormality or personality
44 disorder that makes the person likely to engage in acts of sexual
45 violence if not confined in a secure facility for control, care and
46 treatment.

1 "Treatment team" means the individuals, agencies or firms which
2 provide treatment, supervision or other services at a facility designated
3 for the custody, care and treatment of sexually violent predators.

4
5 4. (New section) a. When it appears that a person may meet the
6 criteria of a sexually violent predator as defined in this act, the agency
7 with jurisdiction shall give written notice to the Attorney General 90
8 days, or as soon as practicable, prior to:

9 (1) the anticipated release from total confinement of a person who
10 has been convicted or adjudicated delinquent of a sexually violent
11 offense;

12 (2) any commitment status review hearing at which the Department
13 of Human Services intends to recommend discharge or believes that
14 discharge may be likely, for a person who has been civilly committed
15 pursuant to N.J.S.2C:4-8 following acquittal by reason of insanity of
16 a sexually violent offense; or

17 (3) any hearing at which the Department of Human Services
18 intends to recommend discharge or believes that discharge may be
19 likely, for any person civilly committed based upon a determination
20 that the person lacked mental competence to stand trial pursuant to
21 N.J.S.2C:4-6, if the person had been charged with a sexually violent
22 offense.

23 b. When such notice is given, the agency with jurisdiction shall
24 provide the Attorney General with all information relevant to a
25 determination of whether the person may be a sexually violent
26 predator, including, without regard to classification as confidential
27 pursuant to regulations of the agency with jurisdiction, any parole
28 report, psychological and medical records, any statement of the
29 reasons for denial of parole and a statement from the agency with
30 jurisdiction of the reasons for its determination that the person may be
31 a sexually violent predator.

32 c. All information, documents and records concerning the person's
33 mental condition or which are classified as confidential pursuant to
34 statute or regulations of the agency with jurisdiction that are received
35 or provided pursuant to this section shall be deemed confidential.
36 Unless authorized or required by court order or except as required in
37 the course of judicial proceedings relating to the person's commitment
38 or release, disclosure of such information, documents and records shall
39 be limited to a professional evaluating the person's condition pursuant
40 to this section, the Attorney General and a member of the Attorney
41 General's staff as necessary to the performance of duties imposed
42 pursuant to this section and, if the person is committed, to the staff at
43 the institution providing treatment.

44 d. Any individual acting in good faith who has provided information
45 relevant to a person's need of involuntary commitment under this act
46 or has taken good faith steps to assess a person's need of involuntary

1 commitment under this act is immune from civil or criminal liability.

2 e. The provisions of this section are not jurisdictional, and failure
3 to comply with them in no way prevents the Attorney General from
4 initiating a proceeding against a person otherwise subject to the
5 provisions of this act, nor do the provisions of this act in any way
6 foreclose a proceeding under the provisions of P.L.1987, c.116
7 (C.30:4-27.1 et seq.) for the involuntary commitment of any person
8 charged with or convicted of a sexual offense.

9
10 5. (New section) a. The Attorney General may initiate a court
11 proceeding for involuntary commitment under this act of a person who
12 is currently a patient in a short-term care facility, State or county
13 psychiatric facility or special psychiatric hospital, by submitting to the
14 court a clinical certificate for a sexually violent predator completed by
15 a psychiatrist at the facility at which the person is a patient and the
16 screening certificate which authorized admission of the person to the
17 facility; but both certificates shall not be signed by the same
18 psychiatrist unless the psychiatrist has made a reasonable but
19 unsuccessful attempt to have another psychiatrist conduct the
20 evaluation and execute the certificate.

21 b. If civil commitment is not initiated pursuant to subsection a. of
22 this section, the Attorney General may initiate a court proceeding for
23 the involuntary commitment of a person by the submission to the court
24 of two clinical certificates for a sexually violent predator, at least one
25 of which is prepared by a psychiatrist. The person shall not be
26 involuntarily committed pursuant to this act before the court issues a
27 temporary court order. When the Attorney General determines that the
28 public safety requires initiation of a proceeding pursuant to this
29 subsection, the Attorney General may apply to the court for an order
30 compelling the psychiatric evaluation of the person. The court shall
31 grant the Attorney General's application if the court finds that there is
32 reasonable cause to believe that the person named in the petition is a
33 sexually violent predator.

34 c. The Attorney General may initiate a court proceeding for
35 involuntary commitment under this act of an inmate who is scheduled
36 for release upon expiration of a maximum term of incarceration by
37 submission to the court of two clinical certificates for a sexually
38 violent predator, at least one of which is prepared by a psychiatrist.

39 d. The Attorney General, in exercise of the State's authority as
40 *parens patriae*, may initiate a court proceeding for the involuntary
41 commitment of any person in accordance with the procedures set forth
42 in this section by filing the required submission with the court in the
43 jurisdiction in which the person whose commitment is sought is
44 located.

45 e. Any individual who is a relative by blood or marriage of the
46 person being examined who executes a clinical certificate for a

1 sexually violent predator, or any individual who signs such a clinical
2 certificate for any purpose or motive other than for purposes of care,
3 treatment and confinement of a person in need of involuntary
4 commitment, shall be guilty of a crime of the fourth degree.

5 f. Upon receiving these documents the court shall immediately
6 review them in order to determine whether there is probable cause to
7 believe that the person is a sexually violent predator.

8 g. If the court finds that there is probable cause to believe that the
9 person is a sexually violent predator in need of involuntary
10 commitment, it shall issue an order setting a date for a final hearing
11 and authorizing temporary commitment to a secure facility designated
12 for the custody, care and treatment of sexually violent predators
13 pending the final hearing. In no event shall the person be released from
14 confinement prior to the final hearing.

15 h. In the case of a person committed to a short-term care facility
16 or special psychiatric hospital, after the facility's treatment team
17 conducts a mental and physical examination, administers appropriate
18 treatment and prepares a discharge assessment, the facility shall
19 transfer the person to a secure facility designated for the custody, care
20 and treatment of sexually violent predators pending the final hearing
21 upon providing the person, the person's guardian if any, the person's
22 next-of-kin and the person's attorney 24 hours' advance notice of the
23 pending transfer. Such transfer is to be accomplished in a manner
24 which will give the receiving facility adequate time to examine the
25 person, become familiar with the person's behavior and condition, and
26 prepare for the hearing.

27
28 6. (New section) a. A person who is involuntarily committed
29 pursuant to section 5 of this act shall receive a court hearing with
30 respect to the issue of continuing need for involuntary commitment as
31 a sexually violent predator within 20 days from the date of the
32 temporary commitment order.

33 b. The Attorney General is responsible for presenting the case for
34 the person's involuntary commitment as a sexually violent predator to
35 the court.

36 c. A person subject to involuntary commitment shall have counsel
37 present at the hearing and shall not be permitted to appear at the
38 hearing without counsel.

39
40 7. (New section) a. At least 10 days prior to a court hearing, the
41 Attorney General shall cause notice of the court hearing to be served
42 upon the person, the person's guardian if any, the person's next-of-kin,
43 the person's attorney, the agency with jurisdiction having custody of
44 the person and any other individual specified by the court. The notice
45 shall contain the date, time and location of the court hearing. The
46 person and the person's attorney shall also receive copies of the

1 clinical certificates for a sexually violent predator and supporting
2 documents, the temporary court order and a statement of the person's
3 rights at the court hearing.

4 b. A psychiatrist on the person's treatment team who has conducted
5 a personal examination of the person as close to the court hearing date
6 as possible, but in no event more than five calendar days prior to the
7 court hearing, shall testify at the hearing to the clinical basis for the
8 need for involuntary commitment as a sexually violent predator. Other
9 members of the person's treatment team and any other witness with
10 relevant information offered by the person or the Attorney General
11 shall also be permitted to testify at the hearing.

12 c. The person's next-of-kin may attend and, if the court so
13 determines, may testify at the court hearing.

14 d. The court shall transcribe the court hearing and arrange for the
15 payment of expenses related thereto in the same manner as for other
16 court proceedings.

17

18 8. (New section) A person subject to involuntary commitment as
19 a sexually violent predator has the following rights at a court hearing
20 pursuant to section 7 and any subsequent review court hearing:

21 a. The right to be represented by counsel or, if indigent, by
22 appointed counsel;

23 b. The right to be present at the court hearing unless the court
24 determines that because of the person's conduct at the court hearing
25 the proceeding cannot reasonably continue while the person is present;

26 c. The right to present evidence;

27 d. The right to cross-examine witnesses; and

28 e. The right to a hearing in camera.

29

30 9. (New section) a. If the court finds by clear and convincing
31 evidence that the person needs continued involuntary commitment as
32 a sexually violent predator, it shall issue an order authorizing the
33 involuntary commitment of the person to a facility designated for the
34 custody, care and treatment of sexually violent predators. The court
35 shall also schedule a subsequent court hearing pursuant to section 12
36 of this act.

37 b. If the court finds that the person is not a sexually violent
38 predator, the court shall so order. A person who is serving a term of
39 incarceration shall be returned to the appropriate State, county or local
40 authority to complete service of the term of incarceration imposed
41 until released in accordance with law, and any other person shall be
42 discharged by the facility within 48 hours of the court's verbal order
43 or by the end of the next working day, whichever is longer, with a
44 discharge plan prepared pursuant to section 14 of this act.

45 c. (1) If the Department of Human Services recommends
46 conditional discharge of the person and the court finds that the person

1 will not be likely to engage in acts of sexual violence because the
2 person is amenable to and highly likely to comply with a plan to
3 facilitate the person's adjustment and reintegration into the community
4 so as to render involuntary commitment as a sexually violent predator
5 unnecessary for that person, the court may order that the person be
6 conditionally discharged in accordance with such plan.

7 (2) Conditions imposed pursuant to this subsection shall include
8 those recommended by the person's treatment team and developed
9 with the participation of the person and shall be approved by the
10 Department of Human Services. Conditions imposed on the person
11 shall be specific and shall be for the purpose of ensuring that the
12 person participates in necessary treatment and that the person does not
13 represent a risk to public safety. If the court imposes conditions for a
14 period exceeding six months, the court shall provide for a review
15 hearing on a date the court deems appropriate but in no event later
16 than six months from the date of the order. The review hearing shall
17 be conducted in the manner provided in this section, and the court may
18 impose any order authorized pursuant to this section.

19 (3) A designated staff member on the person's treatment team shall
20 notify the court if the person fails to meet the conditions of the
21 discharge plan, and the court shall issue an order directing that the
22 person be taken to a facility designated for the custody, care and
23 treatment of sexually violent predators for an assessment. The court
24 shall determine, in conjunction with the findings of the assessment, if
25 the person needs to be returned to custody and, if so, the person shall
26 be returned to the designated facility for the custody, care and
27 treatment of sexually violent predators. The court shall hold a hearing
28 within 20 days of the day the person was returned to custody to
29 determine if the order of conditional discharge should be vacated.

30 d. Notwithstanding the provisions of this section, or any provision
31 of sections 12, 13 or 14 of this act to the contrary, no person
32 committed while serving a term of incarceration shall be discharged by
33 the court prior to the date on which the person's maximum term would
34 have expired had he not been committed. If the court determines that
35 the person's mental condition has so changed that the person is safe to
36 be at large, the court shall order that the person be returned to the
37 appropriate State, county or local authority to complete service of the
38 term of incarceration imposed until released in accordance with law,
39 and the person shall be given day for day credit for all time during
40 which the person was committed.

41 e. Notwithstanding the provisions of this section, or any provision
42 of sections 12, 13 or 14 of this act to the contrary, no person
43 committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal
44 charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning
45 lack of mental competence to stand trial shall be discharged by the
46 court unless the prosecuting attorney in the case receives prior notice

1 and an opportunity to be heard.

2

3 10. (New section) If a person who has been civilly committed
4 based upon a determination that the person lacked mental competence
5 to stand trial pursuant to N.J.S.2C:4-6 is about to be released, and the
6 person's involuntary commitment is sought pursuant to this act, the
7 court shall first hear evidence and determine whether the person did
8 commit the act charged.

9 a. The rules of evidence applicable in criminal cases shall apply,
10 and all constitutional rights available to a defendant at a criminal trial,
11 other than the right to a trial by jury and the right not to be tried while
12 incompetent, shall apply.

13 b. After hearing evidence on this issue, the court shall make
14 specific findings on whether the person did commit the act charged,
15 the extent to which the person's lack of mental competence affected
16 the outcome of the hearing, including its effect on the person's ability
17 to consult with and assist counsel and to testify on the person's own
18 behalf, the extent to which the evidence could be reconstructed
19 without the assistance of the person and the strength of the
20 prosecution's case.

21 c. If, after the conclusion of the hearing on this issue, the court
22 finds beyond a reasonable doubt that the person did commit the act
23 charged, the court shall enter a final order, appealable by the person,
24 on that issue and may proceed to consider whether the person should
25 be committed pursuant to this act.

26

27 11. (New section) a. The Department of Corrections shall be
28 responsible for the operation of any facility designated for the custody,
29 care and treatment of sexually violent predators, and shall provide or
30 arrange for custodial care of persons committed pursuant to this act.
31 Except as may be provided pursuant to subsection c. of section 9 of
32 this act, a person committed pursuant to this act shall be kept in a
33 secure facility and shall be housed and managed separately from
34 offenders in the custody of the Department of Corrections and, except
35 for occasional instances of supervised incidental contact, shall be
36 segregated from such offenders.

37 b. The Division of Mental Health Services in the Department of
38 Human Services shall provide or arrange for treatment for a person
39 committed pursuant to this act. Such treatment shall be appropriately
40 tailored to address the specific needs of sexually violent predators.

41 c. Appropriate representatives of the Department of Corrections
42 and the Department of Human Services shall participate in an
43 interagency oversight board to facilitate the coordination of the
44 policies and procedures of the facility.

45

46 12. (New section) A person committed under this act shall be

1 afforded an annual court review hearing of the need for involuntary
2 commitment as a sexually violent predator. The review hearing shall
3 be conducted in the manner provided in section 7 of this act. If the
4 court determines at a review hearing that involuntary commitment as
5 a sexually violent predator shall be continued, it shall execute a new
6 order. The court shall conduct the first review hearing 12 months from
7 the date of the first hearing, and subsequent review hearings annually
8 thereafter. The court may schedule additional review hearings but,
9 except in extraordinary circumstances, not more often than once every
10 30 days.

11

12 13. (New section) a. At any time during the involuntary
13 commitment of a person under this act, if the person's treatment team
14 determines that the person's mental condition has so changed that the
15 person is not likely to engage in acts of sexual violence if released, the
16 treatment team shall recommend that the Department of Human
17 Services authorize the person to petition the court for discharge from
18 involuntary commitment status. The Department of Human Services
19 shall notify the Attorney General immediately upon providing such
20 authorization. If a discharge plan has not been developed pursuant to
21 section 14 of this act, it shall be developed forthwith.

22 b. The person shall serve the authorized petition for discharge upon
23 the committing court and the Attorney General. The Attorney General
24 may obtain an independent clinical evaluation of the person, which
25 shall be performed within 15 days of receipt by the Attorney General
26 of the authorized petition for discharge. If, within 15 days of receipt
27 of such authorized petition or upon completion of an independent
28 clinical evaluation, if any, the Attorney General files a request for a
29 hearing on the issue of continuing need for commitment and serves
30 notice of that request, in accordance with the provisions of section 7
31 of this act, the court shall schedule a hearing on the issue. The hearing
32 shall be conducted in the manner provided in section 9 of this act.

33 c. If the person committed pursuant to this act had at the time of
34 such commitment been confined pursuant to an order entered under
35 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
36 insanity or under N.J.S.2C:4-6 concerning lack of mental competence
37 to stand trial, the Attorney General shall provide written notice to the
38 prosecutor of the person's authorized petition for discharge from
39 involuntary commitment status. If, within five days of receipt of such
40 notice, the prosecutor files a request for a hearing on the issue of
41 continuing need for commitment and serves notice of that request, in
42 accordance with the provisions of section 7 of this act, the court shall
43 schedule a hearing on the issue. The hearing shall be conducted in the
44 manner provided in section 9 of this act.

45 d. Nothing in this act shall prohibit a person from filing a petition
46 for discharge from involuntary commitment status without

1 authorization from the Department of Human Services. Upon receipt
2 of such a petition, the court shall review the petition to determine:

3 (1) whether the petition contains facts upon which the court could
4 find that the condition of the person has so changed from the time of
5 the filing of the person's prior petition that a hearing is warranted, or

6 (2) whether the petition is supported by a professional expert
7 evaluation or report stating that the person's mental condition has so
8 changed that the person is not likely to engage in acts of sexual
9 violence if released, which evidence had not been provided to the
10 court in its prior annual review.

11 If the petition fails to satisfy either of these requirements, the court
12 shall deny the petition without a hearing.

13

14 14. (New section) A person discharged by the court shall have a
15 discharge plan prepared by the treatment team at the facility
16 designated for the custody, care and treatment of sexually violent
17 predators, pursuant to this section. The treatment team shall give the
18 person an opportunity to participate in the formulation of the
19 discharge plan.

20

21 15. (New section) In addition to any other information required to
22 be released under this act, prior to the release of a person committed
23 under this act, the Department of Corrections shall give written notice
24 of the person's release to any victim in accordance with the provisions
25 of section 6 of P.L.1985, c. 404 (C.52:4B-44), except that failure to
26 notify shall not be a reason for postponement of release. Nothing in
27 this subsection shall create a cause of action against the State or any
28 employee of the State acting within the scope of the employee's
29 employment as a result of the failure to notify under this act.

30

31 16. N.J.S.2C:47-5 is amended to read as follows:

32 a. Any person committed to confinement under the terms of this
33 chapter shall be released under parole supervision when it shall appear
34 to the satisfaction of the State Parole Board, after recommendation by
35 a special classification review board appointed by the commissioner
36 that such person is capable of making an acceptable social adjustment
37 in the community.

38 b. The Chief Executive Officer of the Adult Diagnostic and
39 Treatment Center shall report in writing at least semiannually to the
40 special classification review board concerning the physical and
41 psychological condition of such person with a recommendation as to
42 his continued confinement or consideration for release on parole.

43 c. Any person paroled pursuant to this section shall be subject to
44 the provisions of Title 30 of the Revised Statutes governing parole and
45 the regulations promulgated pursuant thereto.

46 d. When a person confined under the terms of this chapter has not

1 been paroled in accordance with subsection a. of this section and is
2 scheduled for release, not less than 90 days prior to the date of the
3 person's scheduled release the Chief Executive Officer shall:

4 (1) Notify the Attorney General and the prosecutor of the county
5 from which the person was committed of the scheduled release;

6 (2) Provide the Attorney General and the county prosecutor with
7 the officer's opinion as to whether the person may be "in need of
8 involuntary commitment" within the meaning of section 2 of P.L.1987,
9 c.116 (C.30:4-27.2) and as to whether the person may be a "sexually
10 violent predator" within the meaning of section 3 of P.L. , c. (C.)
11 (pending before the Legislature as this bill); and

12 (3) Without regard to classification as confidential pursuant to
13 regulations of the State Parole Board or the Department of
14 Corrections, provide the Attorney General and county prosecutor with
15 all reports, records and assessments relevant to determining whether
16 the person is "in need of involuntary commitment" and whether the
17 person is a "sexually violent predator". All information received shall
18 be deemed confidential and shall be disclosed only as provided in
19 section 4 of P.L.1994, c.134 (C.30:4-82.4).

20 e. Upon receipt of the notice, advice and information required by
21 subsection d. of this section, the Attorney General or county
22 prosecutor shall proceed as provided in section 4 of P.L.1994, c.134
23 (C.30:4-82.4) or section 5 of P.L. c. (C.)(pending before the
24 Legislature as this bill), as appropriate.

25 f. Notwithstanding any provisions of this section to the contrary,
26 a person confined for life at the Adult Diagnostic and Treatment
27 Center, for a crime whose circumstances conform to those enumerated
28 in paragraph (3) of subsection b. of N.J.S.2C:11-3, shall not be eligible
29 for parole or a deduction for commutation or work credits.

30 (cf: P.L.1997, c.60, s.2)

31

32 17. Section 4 of P.L.1994, c.134 (C.30:4-82.4) is amended to read
33 as follows:

34 4. a. In order to ensure that adult and juvenile inmates who are
35 dangerous to themselves or others because of mental illness and who
36 are "in need of involuntary commitment" within the meaning of section
37 2 of P.L.1987, c.116 (C.30:4-27.2) or who are "sexually violent
38 predators" within the meaning of section 3 of P.L. , c.
39 (C.)(pending before the Legislature as this bill) , are not released
40 without appropriate supervision and treatment, the board, the
41 Commissioner of the Department of Corrections, the Attorney
42 General, the Juvenile Justice Commission established pursuant to
43 section 2 of P.L.1995, c.284 (C.52:17B-170) and county prosecutors
44 shall follow the procedures set forth in this section.

45 b. When an adult or juvenile inmate is scheduled for release due to
46 expiration of the inmate's maximum term, the commissioner or the

1 Juvenile Justice Commission shall notify the Attorney General and the
2 prosecutor of the county from which the person was committed if:

3 (1) The adult inmate's term includes a sentence imposed for
4 conviction of aggravated sexual assault, sexual assault or aggravated
5 criminal sexual contact and the court imposing sentence found that the
6 offender's conduct was characterized by a pattern of repetitive,
7 compulsive behavior; **[or]**

8 (2) The parole board or the superintendent of the facility in which
9 the inmate has been confined has advised the commissioner or the
10 Juvenile Justice Commission that the conduct of the inmate during the
11 period of confinement, the inmate's mental condition or the inmate's
12 past history indicates that the inmate may be "in need of involuntary
13 commitment" within the meaning of section 2 of P.L.1987, c.116
14 (C.30:4-27.2) ; or

15 (3) The inmate's term includes a sentence imposed for conviction
16 of a "sexually violent offense" as defined in section 3 of P.L. , c.
17 (C.)(pending before the Legislature as this bill).

18 c. Notice required by subsection b. shall be given no less than
19 90 days before the date on which the inmate's maximum term is
20 scheduled to expire.

21 d. When such notice is given, the board, the Juvenile Justice
22 Commission or the commissioner shall provide the Attorney General
23 and county prosecutor with all information relevant to a determination
24 of whether the inmate may be "in need of involuntary commitment" or
25 may be a "sexually violent predator" , including, without regard to
26 classification as confidential pursuant to regulations of the board, of
27 the Department of Corrections or the Juvenile Justice Commission,
28 any preparole report, psychological and medical records, any statement
29 of the reasons for denial of parole and, if applicable, a statement of the
30 reasons for the determination that the inmate may be "in need of
31 involuntary commitment" or may be a "sexually violent predator" .

32 e. If the Attorney General or county prosecutor determines, on the
33 basis of the information provided pursuant to this section or
34 N.J.S.2C:47-5, that the inmate may be "in need of involuntary
35 commitment" or may be a "sexually violent predator", the
36 Commissioner of Corrections or the Juvenile Justice Commission,
37 upon request of the Attorney General or county prosecutor shall:

38 (1) Permit persons qualified to execute clinical certificates
39 necessary for civil commitment to examine the inmate in the institution
40 in which he is confined; or

41 (2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2), arrange
42 for persons qualified to execute clinical certificates necessary for civil
43 commitment to examine the inmate.

44 f. In the interests of the public safety and the well-being of the
45 inmate, the Attorney General or county prosecutor may exercise
46 discretion to obtain an assessment of the inmate's condition by one or