

AN ACT concerning sexually violent persons.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Sexually Violent Persons Commitment Act is amended by changing Sections 55, 60, and 65 and adding Section 21 as follows:

(725 ILCS 207/21 new)

Sec. 21. Service of petitions. If a person alleged to be a sexually violent person is in the custody of or is being supervised on parole or mandatory supervised release by the Department of Corrections or Department of Juvenile Justice, a petition filed under this Act may be served on the person by personnel of the Department of Corrections or Department of Juvenile Justice. Service may be proved by affidavit of the person making service. The affidavit shall be returned to the Attorney General or State's Attorney of the county where the petition is pending for filing with the court. Service provided for in this Section is in addition to other manners of service provided for in Section 20 of this Act and the Code of Civil Procedure.

(725 ILCS 207/55)

Sec. 55. Periodic reexamination; report.

(a) If a person has been committed under Section 40 of this Act and has not been discharged under Section 65 of this Act, the Department shall submit a written report to the court on his or her mental condition ~~within 6 months after an initial commitment under Section 40 and then~~ at least once every 12 months after an initial commitment under Section 40 thereafter for the purpose of determining whether: (1) the person has made sufficient progress in treatment to be conditionally released and (2) whether the person's condition has so changed since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination) that he or she is no longer a sexually violent person or discharged. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

(b) Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the court that committed the person under Section 40. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board.

(c) Notwithstanding subsection (a) of this Section, the

court that committed a person under Section 40 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination.

(d) Petitions for discharge after reexamination must follow the procedure outlined in Section 65 of this Act.

(Source: P.A. 93-616, eff. 1-1-04; 93-885, eff. 8-6-04.)

(725 ILCS 207/60)

Sec. 60. Petition for conditional release.

(a) Any person who is committed for institutional care in a secure facility or other facility under Section 40 of this Act may petition the committing court to modify its order by authorizing conditional release if at least 12 ~~6~~ months have elapsed since the initial commitment order was entered, an order continuing commitment was entered pursuant to Section 65, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this Section on the person's behalf at any time. If the evaluator on behalf of the Department recommends that the committed person is appropriate for conditional release, then the director or designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice

of his or her intention whether or not to petition for conditional release on the committed person's behalf.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the Attorney General or State's Attorney, whichever is applicable and, subject to paragraph (c)(1) of Section 25 of this Act, appoint counsel. If the person petitions through counsel, his or her attorney shall serve the Attorney General or State's Attorney, whichever is applicable.

(c) Within 20 days after receipt of the petition, upon the request of the committed person or on the court's own motion, the court may appoint an examiner having the specialized knowledge determined by the court to be appropriate, who shall examine the mental condition of the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release. The State has the right to have the person evaluated by experts chosen by the State. Any examination or evaluation conducted under this Section shall be in conformance with the standards developed under the Sex Offender Management Board Act and conducted by an

evaluator approved by the Board. The court shall set a probable cause hearing as soon as practical after the examiners' reports are filed. The probable cause hearing shall consist of a review of the examining evaluators' reports and arguments on behalf of the parties. If the court finds probable cause to believe the person has made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release ~~If the court determines at the probable cause hearing that cause exists to believe that it is not substantially probable that the person will engage in acts of sexual violence if on release or conditional release,~~ the court shall set a hearing on the issue.

(d) The court, without a jury, shall hear the petition as soon as practical after the reports of all examiners are filed with the court. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release ~~to be conditionally released.~~ In making a decision under this subsection, the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b) (1) of Section 15 of this Act, the person's mental history and present mental condition, and what arrangements are available to ensure that

the person has access to and will participate in necessary treatment.

(e) Before the court may enter an order directing conditional release to a less restrictive alternative it must find the following: (1) the person will be treated by a Department approved treatment provider, (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for the treatment and will report progress to the Department on a regular basis, and will report violations immediately to the Department, consistent with treatment and supervision needs of the respondent, (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the Department if the person leaves the housing to which he or she has been assigned without authorization, (4) the person is willing to or has agreed to comply with the treatment provider, the Department, and the court, and (5) the person has agreed or is willing to agree to comply with the behavioral monitoring requirements imposed by the court and the Department.

(f) If the court finds that the person is appropriate for conditional release, the court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the

community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.

(g) The provisions of paragraphs (b) (4), (b) (5), and (b) (6) of Section 40 of this Act apply to an order for conditional release issued under this Section.

(Source: P.A. 96-1128, eff. 1-1-11.)

(725 ILCS 207/65)

Sec. 65. Petition for discharge; procedure.

(a) (1) If the Secretary determines at any time that a person committed under this Act is no longer a sexually violent person, the Secretary shall authorize the person to petition the committing court for discharge. If the evaluator on behalf of the Department recommends that the committed person is no longer a sexually violent person, then the Secretary or

designee shall, within 30 days of receipt of the evaluator's report, file with the committing court notice of his or her determination whether or not to authorize the committed person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the Attorney General or the State's Attorney's office that filed the petition under subsection (a) of Section 15 of this Act, whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held as soon as practical after the date of receipt of the petition.

(2) At a hearing under this subsection, the Attorney General or State's Attorney, whichever filed the original petition, shall represent the State. The State has the right to have the person evaluated by experts chosen by the State ~~and shall have the right to have the petitioner examined by an expert or professional person of his or her choice.~~ The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. The committed person or the State may elect to have the hearing before a jury. The State has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (a)(2) of this Section, the petitioner shall be discharged from the custody or

supervision of the Department. If the court is satisfied that the State has met its burden of proof under paragraph (a)(2), the court may proceed under Section 40 of this Act to determine whether to modify the petitioner's existing commitment order.

(b)(1) A person may petition the committing court for discharge from custody or supervision without the Secretary's approval. At the time of an examination under subsection (a) of Section 55 of this Act, the Secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the Secretary's objection. The notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the report of the Department's examination under Section 55 of this Act. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist to believe that since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination), the condition of the committed person has so changed that he or she is no longer a sexually violent person. However, if a person has previously filed a petition for discharge without the Secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this Section without a hearing unless the petition contains facts upon which

a court could reasonably find that the condition of the person had so changed that a hearing was warranted ~~that warrant a hearing on whether the person is still a sexually violent person.~~ If a person does not file a petition for discharge, yet fails to waive the right to petition under this Section, then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing. The probable cause hearing under this Section must be held as soon as practical after the filing of the reexamination report under Section 55 of this Act.

(2) If the court determines at the probable cause hearing under paragraph (b)(1) of this Section that probable cause exists to believe that since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination), the condition of the committed person has so changed that he or she is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this Section, the committed person is entitled to be present and to the benefit of the protections afforded to the person under Section 25 of this Act. The committed person or the State may elect to have a hearing under this Section before a jury. A verdict of a jury under this Section is not valid unless it is unanimous. The Attorney

General or State's Attorney, whichever filed the original petition, shall represent the State at a hearing under this Section. The State has the right to have the committed person evaluated by experts chosen by the State. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board. At the hearing, the State has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (b)(2) of this Section, the person shall be discharged from the custody or supervision of the Department. If the court or jury is satisfied that the State has met its burden of proof under paragraph (b)(2) of this Section, the court may proceed under Section 40 of this Act to determine whether to modify the person's existing commitment order.

(c) This Section applies to petitions pending on the effective date of this amendatory Act of the 97th General Assembly and to petitions filed on or after that date. This provision is severable from the other provisions of this Section under Section 1.31 of the Statute on Statutes.

(Source: P.A. 96-1128, eff. 1-1-11.)

(725 ILCS 207/70 rep.)

Section 10. The Sexually Violent Persons Commitment Act is

amended by repealing Section 70.

Section 15. The Unified Code of Corrections is amended by changing Sections 3-3-4 and 3-3-5 as follows:

(730 ILCS 5/3-3-4) (from Ch. 38, par. 1003-3-4)

Sec. 3-3-4. Preparation for Parole Hearing.

(a) The Prisoner Review Board shall consider the parole of each eligible person committed to the Adult Division at least 30 days prior to the date he shall first become eligible for parole, and shall consider the parole of each person committed to the Department of Juvenile Justice as a delinquent at least 30 days prior to the expiration of the first year of confinement.

(b) A person eligible for parole shall, no less than 15 days in advance of his parole interview, prepare a parole plan in accordance with the rules of the Prisoner Review Board. The person shall be assisted in preparing his parole plan by personnel of the Department of Corrections, or the Department of Juvenile Justice in the case of a person committed to that Department, and may, for this purpose, be released on furlough under Article 11 or on authorized absence under Section 3-9-4. The appropriate Department shall also provide assistance in obtaining information and records helpful to the individual for his parole hearing. If the person eligible for parole has a petition or any written submissions prepared on his or her

behalf by an attorney or other representative, the attorney or representative for the person eligible for parole must serve by certified mail the State's Attorney of the county where he or she was prosecuted with the petition or any written submissions 15 days after his or her parole interview. The State's Attorney shall provide the attorney for the person eligible for parole with a copy of his or her letter in opposition to parole via certified mail within 5 business days of the en banc hearing.

(c) Any member of the Board shall have access at all reasonable times to any committed person and to his master record file within the Department, and the Department shall furnish such a report to the Board concerning the conduct and character of any such person prior to his or her parole interview.

(d) In making its determination of parole, the Board shall consider:

(1) material transmitted to the Department of Juvenile Justice by the clerk of the committing court under Section 5-4-1 or Section 5-10 of the Juvenile Court Act or Section 5-750 of the Juvenile Court Act of 1987;

(2) the report under Section 3-8-2 or 3-10-2;

(3) a report by the Department and any report by the chief administrative officer of the institution or facility;

(4) a parole progress report;

(5) a medical and psychological report, if requested by

the Board;

(6) material in writing, or on film, video tape or other electronic means in the form of a recording submitted by the person whose parole is being considered; ~~and~~

(7) material in writing, or on film, video tape or other electronic means in the form of a recording or testimony submitted by the State's Attorney and the victim or a concerned citizen pursuant to the Rights of Crime Victims and Witnesses Act; and -

(8) the person's eligibility for commitment under the Sexually Violent Persons Commitment Act.

(e) The prosecuting State's Attorney's office shall receive from the Board reasonable written notice not less than 30 days prior to the parole interview and may submit relevant information by oral argument or testimony of victims and concerned citizens, or both, in writing, or on film, video tape or other electronic means or in the form of a recording to the Board for its consideration. Upon written request of the State's Attorney's office, the Prisoner Review Board shall hear protests to parole, except in counties of 1,500,000 or more inhabitants where there shall be standing objections to all such petitions. If a State's Attorney who represents a county of less than 1,500,000 inhabitants requests a protest hearing, the inmate's counsel or other representative shall also receive notice of such request. This hearing shall take place the month following the inmate's parole interview. If the inmate's parole

interview is rescheduled then the Prisoner Review Board shall promptly notify the State's Attorney of the new date. The person eligible for parole shall be heard at the next scheduled en banc hearing date. If the case is to be continued, the State's Attorney's office and the attorney or representative for the person eligible for parole will be notified of any continuance within 5 business days. The State's Attorney may waive the written notice.

(f) The victim of the violent crime for which the prisoner has been sentenced shall receive notice of a parole hearing as provided in paragraph (4) of subsection (d) of Section 4.5 of the Rights of Crime Victims and Witnesses Act.

(g) Any recording considered under the provisions of subsection (d)(6), (d)(7) or (e) of this Section shall be in the form designated by the Board. Such recording shall be both visual and aural. Every voice on the recording and person present shall be identified and the recording shall contain either a visual or aural statement of the person submitting such recording, the date of the recording and the name of the person whose parole eligibility is being considered. Such recordings shall be retained by the Board and shall be deemed to be submitted at any subsequent parole hearing if the victim or State's Attorney submits in writing a declaration clearly identifying such recording as representing the present position of the victim or State's Attorney regarding the issues to be considered at the parole hearing.

(h) The Board shall not release any material to the inmate, the inmate's attorney, any third party, or any other person containing any information from the victim or from a person related to the victim by blood, adoption, or marriage who has written objections, testified at any hearing, or submitted audio or visual objections to the inmate's parole, unless provided with a waiver from that objecting party.

(Source: P.A. 96-875, eff. 1-22-10; 97-523, eff. 1-1-12.)

(730 ILCS 5/3-3-5) (from Ch. 38, par. 1003-3-5)

Sec. 3-3-5. Hearing and Determination.

(a) The Prisoner Review Board shall meet as often as need requires to consider the cases of persons eligible for parole. Except as otherwise provided in paragraph (2) of subsection (a) of Section 3-3-2 of this Act, the Prisoner Review Board may meet and order its actions in panels of 3 or more members. The action of a majority of the panel shall be the action of the Board. In consideration of persons committed to the Department of Juvenile Justice, the panel shall have at least a majority of members experienced in juvenile matters.

(b) If the person under consideration for parole is in the custody of the Department, at least one member of the Board shall interview him, and a report of that interview shall be available for the Board's consideration. However, in the discretion of the Board, the interview need not be conducted if a psychiatric examination determines that the person could not

meaningfully contribute to the Board's consideration. The Board may in its discretion parole a person who is then outside the jurisdiction on his record without an interview. The Board need not hold a hearing or interview a person who is paroled under paragraphs (d) or (e) of this Section or released on Mandatory release under Section 3-3-10.

(c) The Board shall not parole a person eligible for parole if it determines that:

(1) there is a substantial risk that he will not conform to reasonable conditions of parole; or

(2) his release at that time would deprecate the seriousness of his offense or promote disrespect for the law; or

(3) his release would have a substantially adverse effect on institutional discipline.

(d) A person committed under the Juvenile Court Act or the Juvenile Court Act of 1987 who has not been sooner released shall be paroled on or before his 20th birthday to begin serving a period of parole under Section 3-3-8.

(e) A person who has served the maximum term of imprisonment imposed at the time of sentencing less time credit for good behavior shall be released on parole to serve a period of parole under Section 5-8-1.

(f) The Board shall render its decision within a reasonable time after hearing and shall state the basis therefor both in the records of the Board and in written notice to the person on

whose application it has acted. In its decision, the Board shall set the person's time for parole, or if it denies parole it shall provide for a rehearing not less frequently than once every year, except that the Board may, after denying parole, schedule a rehearing no later than 5 years from the date of the parole denial, if the Board finds that it is not reasonable to expect that parole would be granted at a hearing prior to the scheduled rehearing date. If the Board shall parole a person, and, if he is not released within 90 days from the effective date of the order granting parole, the matter shall be returned to the Board for review.

(f-1) If the Board paroles a person who is eligible for commitment as a sexually violent person, the effective date of the Board's order shall be stayed for 90 days for the purpose of evaluation and proceedings under the Sexually Violent Persons Commitment Act.

(g) The Board shall maintain a registry of decisions in which parole has been granted, which shall include the name and case number of the prisoner, the highest charge for which the prisoner was sentenced, the length of sentence imposed, the date of the sentence, the date of the parole, and the basis for the decision of the Board to grant parole and the vote of the Board on any such decisions. The registry shall be made available for public inspection and copying during business hours and shall be a public record pursuant to the provisions of the Freedom of Information Act.

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(h) The Board shall promulgate rules regarding the exercise of its discretion under this Section.

(Source: P.A. 96-875, eff. 1-22-10; 97-522, eff. 1-1-12.)

Section 99. Effective date. This Act takes effect upon becoming law.