



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5330

Introduced 2/8/2012, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

725 ILCS 207/21 new
725 ILCS 207/55
725 ILCS 207/60
725 ILCS 207/65
725 ILCS 207/70 rep.
730 ILCS 5/3-3-4
730 ILCS 5/3-3-5

from Ch. 38, par. 1003-3-4
from Ch. 38, par. 1003-3-5

Amends the Sexually Violent Persons Commitment Act. Establishes procedures for serving a petition upon a person who is alleged to be sexually violent. Provides that if a person has been committed as a sexually violent person and has not been discharged, the Department of Human Services shall submit a written report to the court on his or her mental condition at least once every 12 months after his or her initial commitment for the purpose of determining (1) whether 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. Provides that at a discharge hearing the State has the right to have the person evaluated by experts chosen by the State. Incorporates into the discharge Section provisions relating to additional discharge hearings. Amends the Unified Code of Corrections. Provides that in making its determination of parole, the Prisoner Review Board shall consider the person's eligibility for commitment under the Sexually Violent Persons Commitment Act. Provides that 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.

LRB097 18170 RLC 65641 b

1 AN ACT concerning sexually violent persons.

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

4 Section 5. The Sexually Violent Persons Commitment Act is
5 amended by changing Sections 55, 60, and 65 and adding Section
6 21 as follows:

7 (725 ILCS 207/21 new)

8 Sec. 21. Service of petitions. If a person alleged to be a
9 sexually violent person is in the custody of or is being
10 supervised by the Department of Corrections or Department of
11 Juvenile Justice, a petition filed under this Act shall be
12 served on the person by personnel of the Department of
13 Corrections or Department of Juvenile Justice or their
14 designee.

15 (725 ILCS 207/55)

16 Sec. 55. Periodic reexamination; report.

17 (a) If a person has been committed under Section 40 of this
18 Act and has not been discharged under Section 65 of this Act,
19 the Department shall submit a written report to the court on
20 his or her mental condition ~~within 6 months after an initial~~
21 ~~commitment under Section 40 and then~~ at least once every 12
22 months after an initial commitment under Section 40 thereafter

1 for the purpose of determining whether: (1) the person has made
2 sufficient progress in treatment to be conditionally released
3 and (2) whether the person's condition has so changed since the
4 most recent periodic reexamination (or initial commitment, if
5 there has not yet been a periodic reexamination) that he or she
6 is no longer a sexually violent person ~~or discharged~~. At the
7 time of a reexamination under this Section, the person who has
8 been committed may retain or, if he or she is indigent and so
9 requests, the court may appoint a qualified expert or a
10 professional person to examine him or her.

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

20 (c) Notwithstanding subsection (a) of this Section, the
21 court that committed a person under Section 40 may order a
22 reexamination of the person at any time during the period in
23 which the person is subject to the commitment order. Any
24 examiner conducting an examination under this Section shall
25 prepare a written report of the examination no later than 30
26 days after the date of the examination.

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

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

4 (725 ILCS 207/60)

5 Sec. 60. Petition for conditional release.

6 (a) Any person who is committed for institutional care in a
7 secure facility or other facility under Section 40 of this Act
8 may petition the committing court to modify its order by
9 authorizing conditional release if at least 12 ~~6~~ months have
10 elapsed since the initial commitment order was entered, an
11 order continuing commitment was entered pursuant to Section 65,
12 the most recent release petition was denied or the most recent
13 order for conditional release was revoked. The director of the
14 facility at which the person is placed may file a petition
15 under this Section on the person's behalf at any time. If the
16 evaluator on behalf of the Department recommends that the
17 committed person is appropriate for conditional release, then
18 the director or designee shall, within 30 days of receipt of
19 the evaluator's report, file with the committing court notice
20 of his or her intention whether or not to petition for
21 conditional release on the committed person's behalf.

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

1 counsel. If the person petitions through counsel, his or her
2 attorney shall serve the Attorney General or State's Attorney,
3 whichever is applicable.

4 (c) Within 20 days after receipt of the petition, upon the
5 request of the committed person or on the court's own motion,
6 the court may appoint an examiner having the specialized
7 knowledge determined by the court to be appropriate, who shall
8 examine the mental condition of the person and furnish a
9 written report of the examination to the court within 30 days
10 after appointment. The examiners shall have reasonable access
11 to the person for purposes of examination and to the person's
12 past and present treatment records and patient health care
13 records. If any such examiner believes that the person is
14 appropriate for conditional release, the examiner shall report
15 on the type of treatment and services that the person may need
16 while in the community on conditional release. The State has
17 the right to have the person evaluated by experts chosen by the
18 State. Any examination or evaluation conducted under this
19 Section shall be in conformance with the standards developed
20 under the Sex Offender Management Board Act and conducted by an
21 evaluator approved by the Board. The court shall set a probable
22 cause hearing as soon as practical after the examiners' reports
23 are filed. The probable cause hearing shall consist of a review
24 of the examining evaluators' reports and arguments on behalf of
25 the parties. If the court finds probable cause to believe the
26 person has made sufficient progress in treatment to the point

1 where he or she is no longer substantially probable to engage
2 in acts of sexual violence if on conditional release ~~If the~~
3 ~~court determines at the probable cause hearing that cause~~
4 ~~exists to believe that it is not substantially probable that~~
5 ~~the person will engage in acts of sexual violence if on release~~
6 ~~or conditional release,~~ the court shall set a hearing on the
7 issue.

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

23 (e) Before the court may enter an order directing
24 conditional release to a less restrictive alternative it must
25 find the following: (1) the person will be treated by a
26 Department approved treatment provider, (2) the treatment

1 provider has presented a specific course of treatment and has
2 agreed to assume responsibility for the treatment and will
3 report progress to the Department on a regular basis, and will
4 report violations immediately to the Department, consistent
5 with treatment and supervision needs of the respondent, (3)
6 housing exists that is sufficiently secure to protect the
7 community, and the person or agency providing housing to the
8 conditionally released person has agreed in writing to accept
9 the person, to provide the level of security required by the
10 court, and immediately to report to the Department if the
11 person leaves the housing to which he or she has been assigned
12 without authorization, (4) the person is willing to or has
13 agreed to comply with the treatment provider, the Department,
14 and the court, and (5) the person has agreed or is willing to
15 agree to comply with the behavioral monitoring requirements
16 imposed by the court and the Department.

17 (f) If the court finds that the person is appropriate for
18 conditional release, the court shall notify the Department. The
19 Department shall prepare a plan that identifies the treatment
20 and services, if any, that the person will receive in the
21 community. The plan shall address the person's need, if any,
22 for supervision, counseling, medication, community support
23 services, residential services, vocational services, and
24 alcohol or other drug abuse treatment. The Department may
25 contract with a county health department, with another public
26 agency or with a private agency to provide the treatment and

1 services identified in the plan. The plan shall specify who
2 will be responsible for providing the treatment and services
3 identified in the plan. The plan shall be presented to the
4 court for its approval within 60 days after the court finding
5 that the person is appropriate for conditional release, unless
6 the Department and the person to be released request additional
7 time to develop the plan.

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

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

12 (725 ILCS 207/65)

13 Sec. 65. Petition for discharge; procedure.

14 (a) (1) If the Secretary determines at any time that a
15 person committed under this Act is no longer a sexually violent
16 person, the Secretary shall authorize the person to petition
17 the committing court for discharge. If the evaluator on behalf
18 of the Department recommends that the committed person is no
19 longer a sexually violent person, then the Secretary or
20 designee shall, within 30 days of receipt of the evaluator's
21 report, file with the committing court notice of his or her
22 determination whether or not to authorize the committed person
23 to petition the committing court for discharge. The person
24 shall file the petition with the court and serve a copy upon
25 the Attorney General or the State's Attorney's office that

1 filed the petition under subsection (a) of Section 15 of this
2 Act, whichever is applicable. The court, upon receipt of the
3 petition for discharge, shall order a hearing to be held as
4 soon as practical after the date of receipt of the petition.

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

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

25 (b)(1) A person may petition the committing court for
26 discharge from custody or supervision without the Secretary's

1 approval. At the time of an examination under subsection (a) of
2 Section 55 of this Act, the Secretary shall provide the
3 committed person with a written notice of the person's right to
4 petition the court for discharge over the Secretary's
5 objection. The notice shall contain a waiver of rights. The
6 Secretary shall forward the notice and waiver form to the court
7 with the report of the Department's examination under Section
8 55 of this Act. If the person does not affirmatively waive the
9 right to petition, the court shall set a probable cause hearing
10 to determine whether facts exist to believe that since the most
11 recent periodic reexamination (or initial commitment, if there
12 has not yet been a periodic reexamination), the condition of
13 the committed person has so changed that he or she is no longer
14 a sexually violent person. However, if a person has previously
15 filed a petition for discharge without the Secretary's approval
16 and the court determined, either upon review of the petition or
17 following a hearing, that the person's petition was frivolous
18 or that the person was still a sexually violent person, then
19 the court shall deny any subsequent petition under this Section
20 without a hearing unless the petition contains facts upon which
21 a court could reasonably find that the condition of the person
22 had so changed that a hearing was warranted ~~that warrant a~~
23 ~~hearing on whether the person is still a sexually violent~~
24 ~~person.~~ If a person does not file a petition for discharge, yet
25 fails to waive the right to petition under this Section, then
26 the probable cause hearing consists only of a review of the

1 reexamination reports and arguments on behalf of the parties.
2 The committed person has a right to have an attorney represent
3 him or her at the probable cause hearing, but the person is not
4 entitled to be present at the probable cause hearing. The
5 probable cause hearing under this Section must be held as soon
6 as practical after the filing of the reexamination report under
7 Section 55 of this Act.

8 (2) If the court determines at the probable cause hearing
9 under paragraph (b)(1) of this Section that probable cause
10 exists to believe that since the most recent periodic
11 reexamination (or initial commitment, if there has not yet been
12 a periodic reexamination), the condition of the committed
13 person has so changed that he or she is no longer a sexually
14 violent person, then the court shall set a hearing on the
15 issue. At a hearing under this Section, the committed person is
16 entitled to be present and to the benefit of the protections
17 afforded to the person under Section 25 of this Act. The
18 committed person or the State may elect to have a hearing under
19 this Section before a jury. A verdict of a jury under this
20 Section is not valid unless it is unanimous. The Attorney
21 General or State's Attorney, whichever filed the original
22 petition, shall represent the State at a hearing under this
23 Section. The State has the right to have the committed person
24 evaluated by experts chosen by the State. The examination shall
25 be conducted in conformance with the standards developed under
26 the Sex Offender Management Board Act and by an evaluator

1 approved by the Board. At the hearing, the State has the burden
2 of proving by clear and convincing evidence that the committed
3 person is still a sexually violent person.

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

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

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

18 (725 ILCS 207/70 rep.)

19 Section 10. The Sexually Violent Persons Commitment Act is
20 amended by repealing Section 70.

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

23 (730 ILCS 5/3-3-4) (from Ch. 38, par. 1003-3-4)

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

2 (a) The Prisoner Review Board shall consider the parole of
3 each eligible person committed to the Adult Division at least
4 30 days prior to the date he shall first become eligible for
5 parole, and shall consider the parole of each person committed
6 to the Department of Juvenile Justice as a delinquent at least
7 30 days prior to the expiration of the first year of
8 confinement.

9 (b) A person eligible for parole shall, no less than 15
10 days in advance of his parole interview, prepare a parole plan
11 in accordance with the rules of the Prisoner Review Board. The
12 person shall be assisted in preparing his parole plan by
13 personnel of the Department of Corrections, or the Department
14 of Juvenile Justice in the case of a person committed to that
15 Department, and may, for this purpose, be released on furlough
16 under Article 11 or on authorized absence under Section 3-9-4.
17 The appropriate Department shall also provide assistance in
18 obtaining information and records helpful to the individual for
19 his parole hearing. If the person eligible for parole has a
20 petition or any written submissions prepared on his or her
21 behalf by an attorney or other representative, the attorney or
22 representative for the person eligible for parole must serve by
23 certified mail the State's Attorney of the county where he or
24 she was prosecuted with the petition or any written submissions
25 15 days after his or her parole interview. The State's Attorney
26 shall provide the attorney for the person eligible for parole

1 with a copy of his or her letter in opposition to parole via
2 certified mail within 5 business days of the en banc hearing.

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

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

11 (1) material transmitted to the Department of Juvenile
12 Justice by the clerk of the committing court under Section
13 5-4-1 or Section 5-10 of the Juvenile Court Act or Section
14 5-750 of the Juvenile Court Act of 1987;

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

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

19 (4) a parole progress report;

20 (5) a medical and psychological report, if requested by
21 the Board;

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

25 (7) material in writing, or on film, video tape or
26 other electronic means in the form of a recording or

1 testimony submitted by the State's Attorney and the victim
2 or a concerned citizen pursuant to the Rights of Crime
3 Victims and Witnesses Act; and -

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

6 (e) The prosecuting State's Attorney's office shall
7 receive from the Board reasonable written notice not less than
8 30 days prior to the parole interview and may submit relevant
9 information by oral argument or testimony of victims and
10 concerned citizens, or both, in writing, or on film, video tape
11 or other electronic means or in the form of a recording to the
12 Board for its consideration. Upon written request of the
13 State's Attorney's office, the Prisoner Review Board shall hear
14 protests to parole, except in counties of 1,500,000 or more
15 inhabitants where there shall be standing objections to all
16 such petitions. If a State's Attorney who represents a county
17 of less than 1,500,000 inhabitants requests a protest hearing,
18 the inmate's counsel or other representative shall also receive
19 notice of such request. This hearing shall take place the month
20 following the inmate's parole interview. If the inmate's parole
21 interview is rescheduled then the Prisoner Review Board shall
22 promptly notify the State's Attorney of the new date. The
23 person eligible for parole shall be heard at the next scheduled
24 en banc hearing date. If the case is to be continued, the
25 State's Attorney's office and the attorney or representative
26 for the person eligible for parole will be notified of any

1 continuance within 5 business days. The State's Attorney may
2 waive the written notice.

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

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

21 (h) The Board shall not release any material to the inmate,
22 the inmate's attorney, any third party, or any other person
23 containing any information from the victim or from a person
24 related to the victim by blood, adoption, or marriage who has
25 written objections, testified at any hearing, or submitted
26 audio or visual objections to the inmate's parole, unless

1 provided with a waiver from that objecting party.

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

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

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

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

14 (b) If the person under consideration for parole is in the
15 custody of the Department, at least one member of the Board
16 shall interview him, and a report of that interview shall be
17 available for the Board's consideration. However, in the
18 discretion of the Board, the interview need not be conducted if
19 a psychiatric examination determines that the person could not
20 meaningfully contribute to the Board's consideration. The
21 Board may in its discretion parole a person who is then outside
22 the jurisdiction on his record without an interview. The Board
23 need not hold a hearing or interview a person who is paroled
24 under paragraphs (d) or (e) of this Section or released on
25 Mandatory release under Section 3-3-10.

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

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

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

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

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

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

18 (f) The Board shall render its decision within a reasonable
19 time after hearing and shall state the basis therefor both in
20 the records of the Board and in written notice to the person on
21 whose application it has acted. In its decision, the Board
22 shall set the person's time for parole, or if it denies parole
23 it shall provide for a rehearing not less frequently than once
24 every year, except that the Board may, after denying parole,
25 schedule a rehearing no later than 5 years from the date of the
26 parole denial, if the Board finds that it is not reasonable to

1 expect that parole would be granted at a hearing prior to the
2 scheduled rehearing date. If the Board shall parole a person,
3 and, if he is not released within 90 days from the effective
4 date of the order granting parole, the matter shall be returned
5 to the Board for review.

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

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

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

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