

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1807

H.P. 1277

House of Representatives, April 16, 1997

An Act to Provide for Commitment of Sexually Violent Predators.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden.
Cosponsored by Representatives: BAKER of Bangor, BODWELL of Brunswick, GERRY of Auburn, MacDOUGALL of North Berwick, MACK of Standish, UNDERWOOD of Oxford, WATERHOUSE of Bridgton.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 34-B MRSA c. 3, sub-c. VI is enacted to read:

6 SUBCHAPTER VI

8 SEXUALLY VIOLENT PREDATORS

10 §3921. Definitions

12 As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. Agency with jurisdiction. "Agency with jurisdiction" means the agency with authority to direct the release of a person serving a sentence or term of confinement and includes the Department of Corrections and the department.

18 2. Committed person. "Committed person" means a person who has been committed as a sexually violent predator under this subchapter.

22 3. Corrections supervisor. "Corrections supervisor" means an employee of the Department of Corrections assigned to supervise the case of a committed person.

26 4. Less restrictive alternative. "Less restrictive alternative" means court-ordered treatment in a setting that is less restrictive than total confinement.

30 5. Likely to engage in predatory acts of sexual violence. "Likely to engage in predatory acts of sexual violence" means it is more probable than not that a person will engage in predatory acts of sexual violence. If the person is not confined at the time the petition is filed, likelihood is demonstrated by a recent overt act of sexual violence.

34 6. Mental abnormality. "Mental abnormality" means a congenital or acquired condition affecting emotional or volitional capacity that predisposes a person to the commission of criminal sexual acts to the extent that the person is a threat to the health and safety of other persons.

38 7. Predatory. "Predatory" means engaging in acts directed at a person for the primary purpose of victimization.

42 8. Prosecuting attorney. "Prosecuting attorney" means a district attorney or the Attorney General.

2 9. Recent overt act. "Recent overt act" means an act that
has the elements of a sexually violent offense or creates a
reasonable fear of a sexually violent offense.

4
6 10. Secure facility. "Secure facility" means a facility
identified by the commissioner as being capable of providing
secure confinement, care and treatment of committed persons.

8
10 11. Sexually violent offense. "Sexually violent offense"
means:

12 A. Gross sexual assault that is a Class A or Class B
offense under Title 17-A, section 253;

14
16 B. Murder, felony murder, aggravated assault, stalking,
kidnapping, burglary of a residency or criminal restraint
that at the time of sentencing for the offense or during
proceedings under this subchapter is determined to be
sexually motivated;

20
22 C. Attempt, criminal solicitation or criminal conspiracy to
commit an offense specified in paragraph A or B; or

24
26 D. Any comparable offense under the laws of the United
States or another state.

28 12. Sexually violent predator. "Sexually violent predator"
means a person who has been convicted of or charged with a
sexually violent offense and who suffers from a mental
30 abnormality or personality disorder that makes the person likely
to engage in predatory acts of sexual violence if not confined in
32 a secure facility.

34 §3922. Notice to district attorney

36 1. When notice required. When it appears that a person may
meet the criteria of a sexually violent predator, the agency with
38 jurisdiction over the person shall refer the person in writing to
the district attorney of the district where the person was
40 charged, 3 months before:

42 A. The anticipated release from total confinement of a
person who has been convicted of a sexually violent offense;

44
46 B. The anticipated release from total confinement of a
person found to have committed a sexually violent offense as
a juvenile;

48
50 C. Release of a person who has been charged with a sexually
violent offense and who has been determined to be

2 incompetent to stand trial pursuant to Title 15, chapter 5;
3 or

4 D. Release of a person who has been found not guilty of a
5 sexually violent offense by reason of mental disease or
6 defect.

8 2. Information required. The agency with jurisdiction
9 shall provide the district attorney with all relevant
10 information, including:

12 A. A complete copy of the institutional records compiled by
13 the Department of Corrections relating to the person and any
14 comparable out-of-state records that are available;

16 B. All records relating to the psychological or psychiatric
17 evaluation and treatment of the person;

18 C. A current record of all prior arrests and convictions,
19 and full police case reports relating to those arrests and
20 convictions; and

22 D. A current mental health evaluation or mental health
23 records review.

26 **§3923. Petition**

28 A prosecuting attorney may file a petition alleging that a
29 person is a sexually violent predator and containing sufficient
30 facts to support the allegation if it appears that the person may
31 be a sexually violent predator and;

32 1. Convicted person. The person was convicted of a
33 sexually violent offense and is about to be released from
34 confinement;

36 2. Juvenile. The person was adjudicated to have committed
37 a juvenile crime involving a sexually violent offense and is
38 about to be released from confinement;

40 3. Incompetent to stand trial. The person was charged with
41 a sexually violent offense and was determined to be incompetent
42 to stand trial and is about to be released or has been released;

44 4. Not guilty by reason of mental disease or defect. The
45 person was found not guilty of a sexually violent offense by
46 reason of mental disease or defect and is about to be released or
47 has been released; or
48

2 5. Post-conviction release. The person was convicted of a
sexually violent offense, has been released from total
4 confinement and has committed a recent overt act.

6 §3924. Probable cause hearing; evaluation

8 1. Determination of probable cause. Upon the filing of a
petition under this subchapter, the judge shall determine whether
10 probable cause exists to believe that the person named in the
petition is a sexually violent predator. If the judge determines
12 that probable cause exists, the judge shall direct that the
person named in the petition be taken into custody by a law
14 enforcement officer or by the department.

16 2. Hearing. Within 72 hours after a person is taken into
custody under subsection 1, the court shall give the person
18 notice of and an opportunity to appear in person at a hearing to
contest probable cause as to whether the person is a sexually
20 violent predator. At the hearing, the court shall verify the
person's identity and determine whether probable cause exists to
22 believe that the person is a sexually violent predator.

24 3. Evidence. The prosecuting attorney may rely on the
petition for determination of probable cause. The prosecuting
26 attorney may supplement the information in the petition with
additional documentary evidence or live testimony.

28 4. Rights of person charged. At the hearing required by
this section, the person alleged to be a sexually violent
30 predator has the right to:

32 A. Be represented by counsel;

34 B. Present evidence on the person's behalf;

36 C. Cross-examine witnesses who testify against the person;
38 and

40 D. View and copy all petitions and reports in the court
file.

42 5. Evaluation. If the judge makes a determination of
probable cause, the judge shall direct that the person be
44 transferred to an appropriate facility for an evaluation of
whether the person is a sexually violent predator. The
46 evaluation must be conducted by a person who is determined to be
professionally qualified to conduct the evaluation pursuant to
48 rules adopted by the department. When adopting rules regarding
professional qualifications, the department shall consult with

2 the Department of Human Services and the Department of
3 Corrections.

4 6. Confinement. If probable cause is found under this
5 section, the person alleged to be a sexually violent predator may
6 not be released from confinement prior to trial under section
7 3925.

8 **§3925. Trial**

10 1. Timing. Within 45 days after a determination of
11 probable cause under section 3924, the court shall conduct a
12 trial to determine if the person is a sexually violent predator.
13 The trial may be continued upon the request of either party with
14 a showing of good cause or by the court on its own motion when
15 the person alleged to be a sexually violent predator will not be
16 substantially prejudiced.

18 2. Right to counsel. A person alleged to be a sexually
19 violent predator is entitled to the assistance of counsel at all
20 stages of proceedings under this subchapter. If the person is
21 determined to be indigent, the court shall appoint counsel.

24 3. Confinement. The person alleged to be a sexually
25 violent predator must be confined in a secure facility for the
26 duration of the trial.

28 4. Right to examination. If a person is subjected to an
29 examination under this subchapter, the person may retain experts
30 or professional persons to perform an examination on the person's
31 behalf. If the person wishes to be examined by a qualified
32 expert or professional person of the person's choice, the
33 examiner may have reasonable access to the person for purposes of
34 the examination and to any relevant medical and psychological
35 records and reports. If a person is indigent, the court shall,
36 upon the person's request, assist the person in obtaining an
37 expert or professional person to perform an examination or
38 participate in the trial on the person's behalf.

40 5. Right to jury. The person, the prosecuting attorney or
41 the judge may demand that the trial be before a 12-person jury.
42 If no demand is made, the trial is before the court.

44 **§3926. Determination**

46 1. Determination; standard of proof. The court or jury
47 shall determine whether a person is a sexually violent predator.
48 The determination must be made beyond a reasonable doubt. A
49 determination made by a jury must be unanimous.

2 2. Proof of recent overt act. If the person alleged to be
a sexually violent predator was not in confinement on the date
4 the petition was filed, the State must prove beyond a reasonable
doubt that the person committed a recent overt act.

6 3. Proof of sexual motivation. If the State alleges that
the prior sexually violent offense that forms the basis for the
8 petition for commitment was an act that was sexually motivated,
the State must prove beyond a reasonable doubt that the act was
10 sexually motivated.

12 4. Commitment. If the court or jury determines that the
person is a sexually violent predator, the person must be
14 committed to the custody of the department for placement in a
secure facility approved by the department for control, care and
16 treatment until such time as the person's mental abnormality or
personality disorder has changed so that it is safe to discharge
18 the person or release the person to a less restrictive
alternative. If the court orders that the person be committed,
20 the court may order that a corrections supervisor be assigned.

22 5. Release. If the court or jury is not satisfied beyond a
reasonable doubt that the person is a sexually violent predator,
24 the court shall direct the person's release.

26 §3927. Persons who were incompetent to stand trial

28 1. Determination on original charge. If the person charged
with a sexually violent offense was found incompetent to stand
30 trial and is about to be or has been released and the person's
commitment is sought pursuant to this subchapter, the court shall
32 first hear evidence and determine whether the person committed
the act or acts originally charged if the original court did not
34 enter a finding prior to dismissal that the person committed the
act or acts charged.

36 2. Procedures. The hearing required by this section must
38 comply with all the procedures specified in section 3926. In
addition the rules of evidence applicable in criminal cases
40 apply, and all constitutional rights available to defendants at
criminal trials other than the right not to be tried while
42 incompetent apply.

44 3. Findings. After hearing evidence on the question of
whether the person committed the act or acts originally charged,
46 the court shall make specific findings on:

48 A. Whether the person did commit the act or acts;

2 B. The extent to which the person's incompetence or
4 developmental disability affected the outcome of the
6 original hearing, including its effect upon the ability to
8 consult with and assist counsel and to testify on the
 person's own behalf, and the extent to which the evidence
 could be reconstructed without the assistance of the person;
 and

10 C. The strength of the prosecution's case.

12 4. Effect of determination. If, after the conclusion of
14 the hearing on whether the person committed the original act or
16 acts, the court finds beyond a reasonable doubt that the person
 did commit the act or acts charged, the court shall enter a final
 order and may proceed to consider whether the person should be
 committed pursuant to this subchapter.

18 §3928. Place of confinement

20 Confinement must be in a secure facility that is appropriate
22 for persons confined as a result of criminal incompetency, except
24 that confinement may be to a county jail or a correctional
 facility for up to 7 days pending proceedings under this chapter.

26 §3929. Annual examination of confined person

28 A person committed under this subchapter must be examined at
30 least once each year to determine the person's mental condition.
32 A report of the examination must be submitted to the court that
34 committed the person and must consider whether conditional
36 release to a less restrictive alternative is in the best interest
 of the person and will adequately protect the community. The
 person may retain or, if the person is indigent and so requests,
 the court may appoint a qualified expert or a professional person
 to examine the person. The expert or professional person must
 have access to all records concerning the person.

38 §3930. Rights of committed person

40 1. Legal rights. A person whose liberty is restricted
42 under this subchapter does not forfeit any legal right or suffer
44 any legal disability as a result of any actions taken under this
 subchapter except as specifically provided in this subchapter.

46 2. Right to care and treatment. A person committed under
48 this subchapter has the right to adequate care and individualized
50 treatment. The department shall keep records of medical, expert
 and professional care and treatment received by a committed
 person and shall keep copies of all reports of periodic
 examinations made pursuant to this subchapter. Records kept by

2 the department under this section must be made available to the
3 committed person, the committed person's attorney, the
4 prosecuting attorney, the court, the protection and advocacy
5 agency designated under Title 5, chapter 511 or an expert or
6 professional person who demonstrates a need for access to the
7 records.

8 **3. Safeguarding personal property.** When a person is taken
9 into custody or transferred to a secure facility pursuant to a
10 petition under this subchapter, the person in charge of the
11 facility shall take reasonable precautions to inventory and
12 safeguard the personal property of the person detained or
13 transferred. A copy of the inventory, signed by the person
14 making it, must be given to the person detained and must be open
15 to inspection by any responsible person, subject by conditions
16 imposed by the detained person. For purposes of this subsection,
17 "responsible person" includes the guardian, conservator,
18 attorney, spouse, parent, adult child or adult sibling of the
19 person detained. The facility may not disclose the contents of
20 the inventory to any person other than a responsible person
21 without the consent of the detained person or an order of the
22 court.

23 **4. Seeking release.** This subchapter does not prohibit a
24 person who has been committed from exercising any right otherwise
25 available for the purpose of obtaining release from confinement,
26 including the right to petition for a writ of habeas corpus.

27 **§3931. Petition for release**

28 **1. Petition by commissioner.** If the commissioner
29 determines that a committed person's mental abnormality or
30 personality disorder has changed so that the person is not likely
31 to engage in predatory acts of sexual violence if conditionally
32 released to a less restrictive alternative or unconditionally
33 discharged, the commissioner shall authorize the person to
34 petition the court for conditional release to a less restrictive
35 alternative or unconditional discharge as follows.

36 **A.** The petition must be served upon the court and the
37 prosecuting attorney.

38 **B.** The court, upon receipt of the petition for conditional
39 release to a less restrictive alternative or unconditional
40 discharge, shall order a hearing within 45 days.

41 **C.** The prosecuting attorney shall represent the State and
42 may have the petitioner examined by an expert or
43 professional person of the prosecuting attorney's choice.

2 D. The hearing must be before a jury if requested by either
the petitioner or the prosecuting attorney.

4 E. The burden of proof is on the prosecuting attorney to
show beyond a reasonable doubt that the petitioner's mental
6 abnormality or personality disorder remains such that it is
not safe to discharge the petitioner and that, if
8 conditionally released to a less restrictive alternative or
unconditionally discharged, the petitioner is likely to
10 engage in predatory acts of sexual violence.

12 2. Petition by committed person. The committed person may
petition the court for conditional release to a less restrictive
14 alternative or unconditional release without the commissioner's
approval.

16 A. The commissioner shall provide the committed person with
18 written annual notice of the person's right to petition the
court for conditional release to a less restrictive
20 alternative or unconditional discharge over the
commissioner's objection. The notice must contain a waiver
22 of rights.

24 B. The commissioner shall forward the notice and waiver
form to the court with the annual report. If the person
26 does not affirmatively waive the right to petition, the
court shall set a preliminary hearing to determine whether
28 facts exist that warrant a hearing on whether the person's
condition has changed so that it is safe for the person to
30 be conditionally released to a less restrictive alternative
or to be unconditionally released.

32 C. The committed person has the right to have an attorney
34 represent the person at the preliminary hearing required in
paragraph B but the person is not entitled to be present at
36 the preliminary hearing.

38 3. Hearing. If the court at the preliminary hearing
determines that probable cause exists to believe that the
40 person's mental abnormality or personality disorder has changed
so that the person is not likely to engage in predatory acts of
42 sexual violence if conditionally released to a less restrictive
alternative or unconditionally discharged, the court shall set a
44 hearing on the issue.

46 A. At the hearing, the committed person may be present and
has the same constitutional protections that are afforded at
48 the initial commitment proceeding.

2 B. The prosecuting attorney shall represent the State and
may request a jury trial and have the committed person
evaluated by experts chosen by the State.

4
6 C. The committed person has the right to have an expert
evaluation. The court shall appoint an expert if the person
is indigent and requests an appointment.

8
10 D. The burden of proof at the hearing is on the State to
prove beyond a reasonable doubt that the committed person's
mental abnormality or personality disorder remains such that
the person is likely to engage in predatory acts of sexual
violence if conditionally released to a less restrictive
alternative or unconditionally discharged.

16 **§3932. Court jurisdiction**

18 The jurisdiction of the court over a person civilly
committed under this subchapter continues until the person is
unconditionally discharged.

22 **§3933. Conditional release to less restrictive alternative;**
proceedings

24
26 1. Finding. Before the court may enter an order directing
conditional release to a less restrictive alternative, the court
must find that:

28
30 A. The person will be treated by a treatment provider who
is qualified to provide treatment;

32 B. The treatment provider has presented a specific course
of treatment, has agreed to assume responsibility for the
treatment, will report progress to the court on a regular
basis and will report violations immediately to the
department, the court, the prosecuting attorney and the
corrections supervisor;

38
40 C. 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 department and the court and immediately to report to
the court, the prosecuting attorney and the corrections
supervisor if the person leaves the housing to which the
person has been assigned without authorization;

48
50 D. The person is willing to comply with the treatment
provider and all requirements imposed by the treatment
provider and the court; and

2 E. The person is willing to comply with supervision
3 requirements imposed by the Department of Corrections.

4
5 2. Decision. The court shall direct as follows.

6
7 A. Upon the conclusion of the evidence in a hearing on a
8 petition for conditional release to a less restrictive
9 alternative, if the court finds that there is no legally
10 sufficient evidentiary basis for a reasonable jury to find
11 that the conditions for release have been met, the court
12 shall grant a motion by the State for a judgment as a matter
13 of law on the issue of conditional release to a less
14 restrictive alternative.

15 B. When the issue of conditional release to a less
16 restrictive alternative is submitted to the jury, the court
17 shall instruct the jury to return a verdict in substantially
18 the following form: "Has the State proved beyond a
19 reasonable doubt that the proposed less restrictive
20 alternative is not in the best interest of the respondent or
21 will not adequately protect the community? Answer: Yes or
22 No."

23
24 §3934. Conditional release to less restrictive alternative;
25 judgment; conditions

26
27 1. Judgment. Conditional release to a less restrictive
28 alternative is permitted if the court or jury determines that
29 conditional release to a less restrictive alternative is in the
30 best interest of the person and will adequately protect the
31 community, and the court determines that the minimum conditions
32 set forth in section 3933, subsection 1 have been met.

33
34 2. Conditions for granting release. The court shall impose
35 any additional conditions on release necessary to ensure
36 compliance with treatment and to protect the community. If the
37 court finds that conditions do not exist that will both ensure
38 the person's compliance with treatment and protect the community,
39 the person must be remanded to the custody of the department for
40 control, care and treatment in a secure facility.

41
42 3. Service provider other than State. If the service
43 provider designated to provide inpatient or outpatient treatment
44 or to monitor or supervise any other terms and conditions of a
45 person's placement in a less restrictive alternative is other
46 than the department or the Department of Corrections, that
47 service provider must agree in writing to provide the treatment.

48
49 4. Conditions of release. Before authorizing release to a
50 less restrictive alternative, the court shall impose such

2 conditions on the person as are necessary to ensure the safety of
3 the community. A copy of the conditions of release must be given
4 to the person and the person's designated service provider. The
5 court shall order the department or the Department of Corrections
6 to investigate the less restrictive alternative and recommend any
7 additional conditions to the court. These conditions include,
8 but are not limited to, the following:

9 A. Specification of residence;

10 B. Prohibition of contact with potential or past victims;

11 C. Prohibition of alcohol or other drug use;

12 D. Participation in a specific course of inpatient or
13 outpatient treatment that may include monitoring by the use
14 of polygraph and plethysmograph;

15 E. Supervision by a corrections supervisor;

16 F. A requirement that the person remain within the State
17 unless the person receives prior authorization from the
18 court to leave the State; and

19 G. Any other conditions that the court determines are in
20 the best interest of the person or others.

21 5. Report by service provider. A service provider
22 designated to provide inpatient or outpatient treatment shall
23 submit monthly, or as otherwise directed by the court, a report
24 stating whether the person is complying with the terms and
25 conditions of the conditional release to a less restrictive
26 alternative. The report must be submitted to the department, the
27 facility from which the person was released, the prosecuting
28 attorney and the person's corrections supervisor.

29 6. Review of release. The release of a person to a less
30 restrictive alternative must be reviewed by the court that
31 released the person no later than one year after the release and
32 annually thereafter until the person is unconditionally
33 discharged. Review may occur in a shorter time or more
34 frequently, if the court, in its discretion on its own motion or
35 on motion of the committed person, the commissioner or the
36 prosecuting attorney determines a shorter review time is
37 desirable. The sole question to be determined by the court is
38 whether the conditional release to a less restrictive alternative
39 should be continued. The court in making its determination must
40 be aided by the periodic reports filed pursuant to subsection 5
41 and the opinions of the commissioner and other experts or
42 professional persons.

2 **§3935. Revocation of conditional release**

4 **1. Petition.** The department, any service provider required
6 to submit reports pursuant to section 3934, the prosecuting
8 attorney or the corrections supervisor may petition the court to
10 schedule, or the court on its own motion may schedule, an
12 immediate hearing for the purpose of revoking or modifying the
terms of the person's conditional release to a less restrictive
alternative if the petitioner or the court believes the released
person is not complying with the terms and conditions of the
release or is in need of additional care and treatment.

14 **2. Apprehension.** If the department, the prosecuting
16 attorney, the corrections supervisor or the court, based upon
18 information received, reasonably believes that a conditionally
20 released person is not complying with the terms and conditions of
22 the conditional release to a less restrictive alternative, the
24 court or corrections supervisor may order that the conditionally
26 released person be apprehended and taken into custody until a
28 hearing can be scheduled to determine whether the person's
30 conditional release should be revoked or modified. The court
must be notified of the person's apprehension before the close of
the next judicial day. Both the prosecuting attorney and the
conditionally released person may request an immediate mental
examination of the conditionally released person. If the
conditionally released person is indigent, the court, upon
request, shall assist the person in obtaining a qualified expert
or professional person to conduct the examination.

32 **3. Hearing.** The court, upon receiving notification of the
34 person's apprehension, shall promptly schedule a hearing. The
36 issue to be determined at the hearing is whether the State has
38 proven by a preponderance of the evidence that the conditionally
40 released person did not comply with the terms and conditions of
release. Hearsay evidence is admissible if the court finds that
it is reliable. At the hearing, the court shall determine
whether the person should continue to be conditionally released
on the same or modified conditions or whether conditional release
should be revoked and the person committed to total confinement.

42 **§3936. Reimbursement of department**

44 The department is responsible for all costs relating to the
46 evaluation and treatment of a person committed to the
48 department's custody whether the person is confined to a secure
50 facility or released to a less restrictive alternative. The
department may require reimbursement of those costs to the extent
that the committed person is able to pay.

2 **§3937. Record check for employees of secure facility**

4 The commissioner shall require a criminal record check of
6 all employees working at a secure facility where persons are
8 confined under this subchapter. Both state and federal criminal
10 records must be checked. Fingerprints may be required. The
12 department shall pay the costs of the record check. Information
14 obtained may only be used in making the initial employment
16 decision or a decision to assign an employee to work in a secure
18 facility.

20 **§3938. Release of information**

22 The commissioner may release any relevant information
24 obtained under this chapter if the commissioner determines that
26 the release is necessary to protect the public.

28 **§3939. Notice of conditional release, discharge or escape**

30 1. Standard notice. At the earliest possible time, and no
32 later than 30 days before conditional release or unconditional
34 discharge, the department shall send written notice of
36 conditional release, unconditional discharge or escape to the
38 following:

40 A. The State Police;

42 B. The local law enforcement agency in the municipality in
44 which the person will reside;

46 C. The sheriff of the county where the person will reside;

48 D. The sheriff of the county where the person was last
50 convicted of a sexually violent offense if the department
52 does not know where the person will reside; and

54 E. If the committed person has escaped, the local law
56 enforcement agency and sheriff for the location in which the
58 committed person resided immediately before commitment as a
60 sexually violent predator or immediately before
62 incarceration for the person's most recent offense.

64 2. Requested notice. The department shall provide notice
66 in the same manner as required under subsection 1 upon the
68 request of:

70 A. A victim of a sexually violent offense or the victim's
72 next of kin if the offense was a homicide;

- 2 B. A witness who testified against the person in commitment
proceedings; or
- 4 C. Any person specified in writing by the prosecuting
attorney.

6 3. Confidentiality of request. Information regarding
8 persons requesting notice under subsection 2 and the notice are
confidential and may not be disclosed to any person, including
10 the committed person.

12 4. Recapture. If the person is recaptured, the department
14 shall notify a person receiving notice under this section as soon
as possible, but no later than 2 working days after the
16 department learns of the recapture.

18 5. Child. If the person to be notified under this section
20 is under 18 years of age, the notice required by this section
must be sent to the person with custody of the child.

22 6. Where notice sent. The department shall send the notice
24 required by this section to the last address provided to the
department by the person requesting notice.

26 §3940. Escorted leave

28 1. Escorted leave authorized. The person in charge of a
30 facility to which a person is confined under this chapter may
grant, subject to approval of the commissioner, an escorted leave
of absence to a confined person for the following purposes:

- 32 A. To go to the bedside of the confined person's spouse or
34 parent or other member of the confined person's immediate
family who is seriously ill;
- 36 B. To attend the funeral of a member of the confined
38 person's immediate family; or
- 40 C. To receive necessary medical or dental care that is not
available in the facility where the person is confined.

42 2. Conditions. A person granted an escorted leave of
44 absence under this section must be under the continuous
supervision of an escort. The escort must be a correctional
46 officer or other person approved by the commissioner. The escort
must be in visual or auditory contact with the person at all
48 times. Contact may not be aided by any electronic or other
device.

