

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1321

H.P. 919

House of Representatives, March 15, 2005

An Act To Establish a Process for the Civil Commitment of Certain Sexual Offenders

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative VAUGHAN of Durham.

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

4 **Sec. 1. 34-A MRSA §1402, sub-§12** is enacted to read:

6 **12. Secure facilities for sexually violent predators.** The
8 commissioner, in cooperation with the Commissioner of Health and
10 Human Services, shall maintain one or more secure facilities for
12 sexually violent predators confined pursuant to Title 34-B,
14 chapter 3, subchapter 6.

16 **Sec. 2. 34-B MRSA §1203, sub-§10** is enacted to read:

18 **10. Secure facilities for sexually violent predators.** The
20 commissioner, in cooperation with the Commissioner of
22 Corrections, shall maintain one or more secure facilities for
24 sexually violent predators confined pursuant to chapter 3,
26 subchapter 6.

28 **Sec. 3. 34-B MRSA c. 3, sub-c. 6** is enacted to read:

30 **SUBCHAPTER 6**

32 **SEXUALLY VIOLENT PREDATORS**

34 **§3921. Definitions**

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

40 **1. Agency with jurisdiction.** "Agency with jurisdiction"
42 means the agency with authority to direct the release of a person
44 -serving a sentence or term of confinement and includes the
46 Department of Corrections and the department.

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

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

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

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

2 time a petition is filed under this subchapter, likelihood is
3 demonstrated by a recent overt act of sexual violence.

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

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

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

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

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

20 11. Sexually violent offense. "Sexually violent offense"
21 means:

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

24 B. Murder, felony murder, aggravated assault, stalking,
25 kidnapping, burglary of a residence or criminal restraint
26 that at the time of sentencing for the offense or during
27 proceedings under this subchapter is determined to be
28 sexually motivated;

29 C. An attempt, criminal solicitation or criminal conspiracy
30 to commit an offense specified in paragraph A or B; or

31 D. Any comparable offense under the laws of the United
32 States or another state.

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

39 §3922. Notice to district attorney

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

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

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

14 C. The release of a person who has been charged with a
15 sexually violent offense and who has been determined to be
16 incompetent to stand trial pursuant to Title 15, chapter 5;
17 or

18 D. The release of a person who has been found not guilty of
19 a sexually violent offense by reason of mental disease or
20 defect.

22 2. Information required. When providing the notice under
23 subsection 1, the agency with jurisdiction shall provide the
24 district attorney with all relevant information, including:

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

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

30 C. A current record of all prior arrests and convictions,
31 and full police case reports relating to those arrests and
32 convictions; and

33 D. A current mental health evaluation or mental health
34 records review.

35 **§3923. Petition**

36 A prosecuting attorney may file a petition in the Superior
37 Court alleging that a person is a sexually violent predator and
38 containing sufficient facts to support the allegation if it
39 appears that the person may be a sexually violent predator and:

40 1. Convicted person. The person was convicted of a
41 sexually violent offense and is about to be released from
42 confinement;

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

6 **3. Incompetent to stand trial.** The person was charged
8 with a sexually violent offense and was determined to be
10 incompetent to stand trial and is about to be released or has
been released from confinement;

12 **4. Not guilty by reason of mental disease or defect.** The
14 person was found not guilty of a sexually violent offense by
reason of mental disease or defect and is about to be released or
has been released from confinement; or

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

20 **§3924. Probable cause hearing; evaluation**

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

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

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

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

48 A. Be represented by counsel;

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

2 C. Cross-examine witnesses who testify against the person;
3 and

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

6
7 5. Evaluation. If the judge makes a determination of
8 probable cause, the judge shall direct that the person be
9 transferred to an appropriate facility for an evaluation of
10 whether the person is a sexually violent predator. The
11 evaluation must be conducted by a person who is determined to be
12 professionally qualified to conduct the evaluation pursuant to
13 rules adopted by the department. When adopting rules regarding
14 professional qualifications, the department shall consult with
15 the Department of Corrections.

16
17 6. Confinement. If probable cause is found under this
18 section, the person alleged to be a sexually violent predator may
19 not be released from confinement prior to trial under section
20 3925.

21 §3925. Trial

22
23 1. Timing. Within 45 days after a determination of
24 probable cause under section 3924, the court shall conduct a
25 trial to determine if the person is a sexually violent predator.
26 The trial may be continued upon the request of either party with
27 a showing of good cause or by the court on its own motion when
28 the person alleged to be a sexually violent predator will not be
29 substantially prejudiced.

30
31 2. Right to counsel. A person alleged to be a sexually
32 violent predator is entitled to the assistance of counsel at all
33 stages of proceedings under this subchapter. If the person is
34 determined to be indigent, the court shall appoint counsel.

35
36 3. Confinement. The person alleged to be a sexually
37 violent predator must be confined in a secure facility for the
38 duration of the trial.

39
40 4. Right to examination. If a person is subjected to an
41 examination under this subchapter, the person may retain experts
42 or professional persons to perform an examination on the person's
43 behalf. If the person wishes to be examined by a qualified
44 expert or professional person of the person's choice, the
45 examiner may have reasonable access to the person for purposes of
46 the examination and to any relevant medical and psychological
47 records and reports. If a person is indigent, the court shall,
48 upon the person's request, assist the person in obtaining an

2 expert or professional person to perform an examination or
3 participate in the trial on the person's behalf.

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

8 **§3926. Determination**

10 1. Determination; standard of proof. The court or jury
11 shall determine whether a person is a sexually violent predator.
12 The determination must be made beyond a reasonable doubt. A
13 determination made by a jury must be unanimous.

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

18 3. Proof of sexual motivation. If the State alleges that
19 the prior sexually violent offense that forms the basis for the
20 petition for commitment filed pursuant to section 3923 was an act
21 that was sexually motivated, the State must prove beyond a
22 reasonable doubt that the act was sexually motivated.

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

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

35 **§3927. Persons who were incompetent to stand trial**

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

44

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

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

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

12 B. The extent to which the person's incompetence or
13 developmental disability affected the outcome of the
14 original hearing, including its effect upon the ability to
15 consult with and assist counsel and to testify on the
16 person's own behalf, and the extent to which the evidence
17 could be reconstructed without the assistance of the person;
18 and
19 and

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

21 4. Effect of determination. If, after the conclusion of
22 the hearing on whether the person committed the act or acts
23 originally charged, the court finds beyond a reasonable doubt
24 that the person did commit the act or acts charged, the court
25 shall enter a final order and may proceed to consider whether the
26 person should be committed pursuant to this subchapter.

27 **§3928. Place of confinement**

28 Confinement must be in a secure facility that is appropriate
29 for persons confined as a result of criminal incompetency, except
30 that confinement may be to a county jail or a correctional
31 facility for up to 7 days pending proceedings under this
32 subchapter.

33 **§3929. Annual examination of confined person**

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

2 to examine the person. The expert or professional person must
3 have access to all records concerning the person.

4 **§3930. Rights of committed person**

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

10
11
12 2. Right to care and treatment. A person committed under
13 this subchapter has the right to adequate care and individualized
14 treatment. The department shall keep records of medical, expert
15 and professional care and treatment received by a committed
16 person and shall keep copies of all reports of periodic
17 examinations made pursuant to this subchapter. Records kept by
18 the department under this section must be made available to the
19 committed person, the committed person's attorney, the
20 prosecuting attorney, the court, the protection and advocacy
21 agency designated under Title 5, chapter 511 or an expert or
22 professional person who demonstrates a need for access to the
23 records.

24 3. Safeguarding personal property. When a person is taken
25 into custody or transferred to a secure facility pursuant to a
26 petition under this subchapter, the person in charge of the
27 facility shall take reasonable precautions to inventory and
28 safeguard the personal property of the person detained or
29 transferred. A copy of the inventory, signed by the person
30 making it, must be given to the person detained and must be open
31 to inspection by any responsible person, subject by conditions
32 imposed by the detained person. For purposes of this subsection,
33 "responsible person" includes the guardian, conservator,
34 attorney, spouse, parent, adult child or adult sibling of the
35 person detained. The facility may not disclose the contents of
36 the inventory to any person other than a responsible person
37 without the consent of the detained person or an order of the
38 court.

39
40 4. Seeking release. This subchapter does not prohibit a
41 person who has been committed from exercising any right otherwise
42 available for the purpose of obtaining release from confinement,
43 including the right to petition for a writ of habeas corpus.

44 **§3931. Petition for release**

45
46
47 1. Petition by commissioner. If the commissioner
48 determines that a committed person's mental abnormality or
49 personality disorder has changed so that the person is not likely
50 to engage in predatory acts of sexual violence if conditionally

2 released to a less restrictive alternative or unconditionally
3 discharged, the commissioner shall authorize the person to
4 petition the court for conditional release to a less restrictive
5 alternative or unconditional discharge as follows.

6 A. The petition must be served upon the court and the
7 prosecuting attorney.

8
9 B. The court, upon receipt of the petition for conditional
10 release to a less restrictive alternative or unconditional
11 discharge, shall order a hearing within 45 days.

12
13 C. The prosecuting attorney shall represent the State and
14 may have the petitioner examined by an expert or
15 professional person of the prosecuting attorney's choice.

16
17 D. The hearing must be before a jury if requested by either
18 the petitioner or the prosecuting attorney.

19
20 E. The burden of proof is on the prosecuting attorney to
21 show beyond a reasonable doubt that the petitioner's mental
22 abnormality or personality disorder remains such that it is
23 not safe to discharge the petitioner and that, if
24 conditionally released to a less restrictive alternative or
25 unconditionally discharged, the petitioner is likely to
26 engage in predatory acts of sexual violence.

27
28 2. Petition by committed person. The committed person may
29 petition the court for conditional release to a less restrictive
30 alternative or unconditional release without the commissioner's
31 approval.

32
33 A. The commissioner shall provide the committed person with
34 written annual notice of the person's right to petition the
35 court for conditional release to a less restrictive
36 alternative or unconditional discharge over the
37 commissioner's objection. The notice must contain a waiver
38 of rights.

39
40 B. The commissioner shall forward the notice and waiver
41 form to the court with the annual report. If the person
42 does not affirmatively waive the right to petition, the
43 court shall set a preliminary hearing to determine whether
44 facts exist that warrant a hearing on whether the person's
45 condition has changed so that it is safe for the person to
46 be conditionally released to a less restrictive alternative
47 or to be unconditionally released.

48
49 C. The committed person has the right to have an attorney
50 represent the person at the preliminary hearing required in

2 paragraph B, but the person is not entitled to be present at
3 the preliminary hearing.

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

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

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

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

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

30 **§3932. Court jurisdiction**

32 The jurisdiction of the court over a person committed under
33 this subchapter continues until the person is unconditionally
34 discharged.

36 **§3933. Conditional release to less restrictive alternative;**
37 **proceedings**

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

42 A. The committed person will be treated by a treatment
43 provider who is qualified to provide treatment;

44 B. The treatment provider has presented a specific course
45 of treatment, has agreed to assume responsibility for the
46 treatment, will report progress to the court on a regular
47 basis and will report violations immediately to the
48 _____

2 department, the court, the prosecuting attorney and the
3 corrections supervisor;

4 C. Housing exists that is sufficiently secure to protect
5 the community, and the person or agency providing housing to
6 the conditionally released person has agreed in writing to
7 accept the person, to provide the level of security required
8 by the department and the court and immediately to report to
9 the court, the prosecuting attorney and the corrections
10 supervisor if the person leaves the housing to which the
11 person has been assigned without authorization;

12
13 D. The committed person is willing to comply with the
14 treatment provider and all requirements imposed by the
15 treatment provider and the court; and

16
17 E. The committed person is willing to comply with
18 supervision requirements imposed by the Department of
19 Corrections and the conditions of any period of supervised
20 release imposed pursuant to Title 17-A, chapter 50.

21
22 **2. Decision.** The court shall direct as follows.

23
24 A. Upon the conclusion of the evidence in a hearing on a
25 petition for conditional release to a less restrictive
26 alternative, if the court finds that there is no legally
27 sufficient evidentiary basis for a reasonable jury to find
28 that the conditions for release have been met, the court
29 shall grant a motion by the State for a judgment as a matter
30 of law on the issue of conditional release to a less
31 restrictive alternative.

32
33 B. When the issue of conditional release to a less
34 restrictive alternative is submitted to the jury, the court
35 shall instruct the jury to return a verdict in substantially
36 the following form: "Has the State proved beyond a
37 reasonable doubt that the proposed less restrictive
38 alternative is not in the best interest of the respondent or
39 will not adequately protect the community? Answer: Yes or
40 No."

41
42 **§3934. Conditional release to less restrictive alternative;**
43 **judgment; conditions**

44
45 **1. Judgment.** Conditional release to a less restrictive
46 alternative is permitted if the court or jury determines that
47 conditional release to a less restrictive alternative is in the
48 best interest of the committed person and will adequately protect
49 the community and if the court determines that the minimum
50 conditions set forth in section 3933, subsection 1 have been met.

2 **2. Conditions for granting release.** The court shall impose
4 any additional conditions on release necessary to ensure
6 compliance with treatment and to protect the community. If the
8 court finds that conditions do not exist that will both ensure
 the committed person's compliance with treatment and protect the
 community, the person must be remanded to the custody of the
 department for control, care and treatment in a secure facility.

10 **3. Service provider other than State.** If the service
12 provider designated to provide inpatient or outpatient treatment
14 or to monitor or supervise any other terms and conditions of a
16 committed person's placement in a less restrictive alternative is
 other than the department or the Department of Corrections, that
 service provider must agree in writing to provide the treatment.

18 **4. Conditions of release.** Before authorizing release to a
20 less restrictive alternative, the court shall impose such
22 conditions on the committed person as are necessary to ensure the
24 safety of the community, including conditions imposed pursuant to
26 Title 17-A, chapter 50. A copy of the conditions of release must
 be given to the person and the person's designated service
 provider. The court shall order the department or the Department
 of Corrections to investigate the less restrictive alternative
 and recommend any additional conditions to the court. These
 conditions include, but are not limited to, the following:

28 A. Specification of residence;

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

32 C. Prohibition of alcohol or other drug use;

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

38 E. Supervision by a corrections supervisor, including a
40 supervisor of conditions imposed pursuant to Title 17-A,
 chapter 50;

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

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

50 **5. Report by service provider.** A service provider
 designated to provide inpatient or outpatient treatment shall

2 submit monthly, or as otherwise directed by the court, a report
3 stating whether the conditionally released person is complying
4 with the terms and conditions of the release to a less
5 restrictive alternative. The report must be submitted to the
6 department, the facility from which the person was released, the
7 prosecuting attorney and the person's corrections supervisor.

8 **6. Review of release.** The release of a conditionally
9 released person to a less restrictive alternative must be
10 reviewed by the court that released the person no later than one
11 year after the conditional release and annually thereafter until
12 the person is unconditionally discharged. Review may occur in a
13 shorter time or more frequently, if the court, in its discretion
14 on its own motion or on motion of the conditionally released
15 person, the commissioner or the prosecuting attorney determines a
16 shorter review time is desirable. The sole question to be
17 determined by the court is whether the conditional release to a
18 less restrictive alternative should be continued. The court in
19 making its determination must be aided by the periodic reports
20 filed pursuant to subsection 5 and the opinions of the
21 commissioner and other experts or professional persons.

22 **§3935. Revocation of conditional release**

23
24 **1. Petition.** The department, any service provider required
25 to submit reports pursuant to section 3934, the prosecuting
26 attorney or the corrections supervisor may petition the court to
27 schedule, or the court on its own motion may schedule, an
28 immediate hearing for the purpose of revoking or modifying the
29 terms of the person's conditional release to a less restrictive
30 alternative if the petitioner or the court believes the released
31 person is not complying with the terms and conditions of the
32 release or is in need of additional care and treatment.

33
34 **2. Apprehension.** If the department, the prosecuting
35 attorney, the corrections supervisor or the court, based upon
36 information received, reasonably believes that a conditionally
37 released person is not complying with the terms and conditions of
38 the conditional release to a less restrictive alternative, the
39 court or corrections supervisor may order that the conditionally
40 released person be apprehended and taken into custody until a
41 hearing can be scheduled to determine whether the person's
42 conditional release should be revoked or modified. The court
43 must be notified of the person's apprehension before the close of
44 the next judicial day. Both the prosecuting attorney and the
45 conditionally released person may request an immediate mental
46 examination of the conditionally released person. If the
47 conditionally released person is indigent, the court, upon
48 request, shall assist the person in obtaining a qualified expert
49 or professional person to conduct the examination.
50

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

12 **§3936. Reimbursement of department**

13 The department is responsible for all costs relating to the
14 evaluation and treatment of a committed person in the
15 department's custody whether the person is confined to a secure
16 facility or released to a less restrictive alternative. The
17 department may require reimbursement of those costs to the extent
18 that the committed person is able to pay.

19 **§3937. Record check for employees of secure facility**

20 The commissioner shall require a criminal record check of
21 each employee working at a secure facility where committed
22 persons are confined under this subchapter. Both state and
23 federal criminal records must be checked. Fingerprints may be
24 required. The department shall pay the costs of the record
25 check. Information obtained may be used only in making the
26 initial employment decision or a decision to assign an employee
27 to work in a secure facility.

28 **§3938. Release of information**

29 The commissioner may release any relevant information
30 obtained under this subchapter if the commissioner determines
31 that the release is necessary to protect the public.

32 **§3939. Notice of conditional release, discharge or escape**

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

38 A. The State Police;

39 B. The local law enforcement agency in the municipality in
40 which the committed person will reside;

2 C. The sheriff of the county where the committed person
3 will reside;

4
5 D. The sheriff of the county where the person was last
6 convicted of a sexually violent offense if the department
7 does not know where the person will reside; and

8
9 E. If the committed person has escaped, the local law
10 enforcement agency and sheriff for the location in which the
11 committed person resided immediately before commitment as a
12 sexually violent predator or immediately before
13 incarceration for the person's most recent offense.

14
15 2. Requested notice. The department shall provide notice
16 in the same manner as required under subsection 1 upon the
17 request of:

18 A. A victim of a sexually violent offense or the victim's
19 next of kin if the offense included a homicide;

20 B. A witness who testified against the person in commitment
21 proceedings; or

22 C. Any person specified in writing by the prosecuting
23 attorney.

24
25 3. Confidentiality of request. Information regarding
26 persons requesting notice under subsection 2 and the notice are
27 confidential and may not be disclosed to any person, including
28 the committed person.

29
30 4. Recapture. If the committed person is recaptured, the
31 department shall notify a person receiving notice under this
32 section as soon as possible, but no later than 2 working days
33 after the department learns of the recapture.

34
35 5. Child. If the person to be notified under this section
36 is under 18 years of age, the notice required by this section
37 must be sent to the person with custody of the child.

38
39 6. Where notice sent. The department shall send the notice
40 required by this section to the last address provided to the
41 department by the person requesting notice.

42
43 **§3940. Escorted leave**

44
45 1. Escorted leave authorized. The person in charge of a
46 facility to which a committed person is confined under this
47 subchapter may grant, subject to approval of the commissioner, an
48 escort for the person.

2 escorted leave of absence to that committed person for the
3 following purposes:

4 A. To go to the bedside of that committed person's spouse
5 or parent or other member of that committed person's
6 immediate family who is seriously ill;

8 B. To attend the funeral of a member of that committed
9 person's immediate family; or

10 C. To receive necessary medical or dental care that is not
11 available in the facility where the committed person is
12 confined.

14 **2. Conditions.** A committed person granted an escorted
15 leave of absence under this section must be under the continuous
16 supervision of an escort. The escort must be a correctional
17 officer or other person approved by the commissioner. The escort
18 shall be in visual or auditory contact with the person at all
19 times. Contact may not be aided by any electronic or other
20 device.

22 **3. Notice.** A committed person may not begin an escorted
23 leave of absence until the commissioner has notified the law
24 enforcement agency with jurisdiction in the area of the person's
25 destination.

28 **4. Restricted to State.** A committed person granted an
29 escorted leave of absence may not leave the State unless approved
30 by the court.

32 **5. Reimbursement of costs.** The commissioner may seek
33 reimbursement from the committed person or members of the family
34 of the committed person for the costs of an escorted leave of
35 absence unless the committed person and the committed person's
36 family members are indigent and without resources sufficient to
37 reimburse the State for the costs of the leave of absence.

40 SUMMARY

42 This bill provides a procedure for the commitment of a
43 person determined to be a sexually violent predator if a court
44 finds that the person has a mental abnormality or personality
45 disorder that makes it likely that the person will engage in
46 predatory acts of sexual violence if not confined in a secure
47 facility. Protections are provided to a person subject to
48 commitment. Care and treatment must be provided and the
49 commitment is subject to annual review. Notice of release or
50 discharge is required for victims, witnesses and other persons

2 identified by the prosecuting attorney. This bill designates the
Commissioner of Corrections and the Commissioner of Health and
4 Human Services as responsible for providing secure facilities for
sexually violent predators. This bill coordinates release from a
6 secure facility for sexually violent predators with supervised
release for sex offenders under the Maine Revised Statutes, Title
17-A, chapter 50.