

MAINE STATE LEGISLATURE

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No. 1807

S.P. 641

March 30, 2007

An Act To Provide for Civil Commitment for Sexually Violent Predators and To Prohibit Sex Offenders from Residing Together

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

A handwritten signature in black ink, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Representative VAUGHAN of Durham and Senators: BENOIT of Sagadahoc,
COURTNEY of York, Representatives: ROBINSON of Raymond, THOMAS of Ripley,
TIBBETTS of Columbia.

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

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

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

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

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

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

12 **SUBCHAPTER 6**

13 **SEXUALLY VIOLENT PREDATORS**

14 **§3921. Definitions**

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

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

20 **2. Committed person.** "Committed person" means a person who has been
21 committed to confinement as a sexually violent predator under this subchapter.

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

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

26 **5. Likely to engage in predatory acts of sexual violence.** "Likely to engage in
27 predatory acts of sexual violence" means it is more probable than not that a person will
28 engage in predatory acts of sexual violence. If the person is not confined at the time a
29 petition for commitment is filed under this subchapter, likelihood is demonstrated by a
30 recent overt act of sexual violence.

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

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

3 8. **Prosecuting attorney.** "Prosecuting attorney" means a district attorney or the
4 Attorney General.

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

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

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

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

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

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

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

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

23 **§3922. Notice to district attorney**

24 1. **When notice required.** When it appears that a person who is in the custody of
25 the State may meet the criteria of a sexually violent predator, the agency with jurisdiction
26 over the person shall refer the person in writing to the district attorney of the district
27 where the person was charged, 3 months before:

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

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

32 C. The release of a person who has been charged with a sexually violent offense and
33 who has been determined to be incompetent to stand trial pursuant to Title 15, chapter
34 5; or

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

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

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

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

9 C. A current record of all prior arrests and convictions and full police case reports
10 relating to those arrests and convictions; and

11 D. A current mental health evaluation or mental health records review.

12 **§3923. Petition**

13 A prosecuting attorney may file in the Superior Court a petition for commitment
14 alleging that a person is a sexually violent predator and containing sufficient facts to
15 support the allegation if it appears that the person may be a sexually violent predator and:

16 **1. Convicted person.** The person was convicted of a sexually violent offense and is
17 about to be released from confinement;

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

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

23 **4. Not criminally responsible by reason of insanity.** The person was found not
24 criminally responsible by reason of insanity of committing a sexually violent offense and
25 is about to be released or has been released from confinement; or

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

28 **§3924. Probable cause hearing; evaluation**

29 **1. Determination of probable cause.** Upon the filing of a petition for commitment
30 under section 3923, the court shall determine whether probable cause exists to believe
31 that the person named in the petition is a sexually violent predator. If the court
32 determines that probable cause exists, the court shall direct that the person named in the
33 petition be taken into custody by a law enforcement officer or by the department.

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

1 **3. Evidence.** The prosecuting attorney may rely on the petition of commitment filed
2 under section 3923 for determination of probable cause at the hearing conducted under
3 subsection 2. The prosecuting attorney may supplement the information in the petition
4 with additional documentary evidence or live testimony.

5 **4. Rights of person charged.** At the hearing required by subsection 2, the person
6 alleged to be a sexually violent predator has the right to:

7 A. Be represented by counsel;

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

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

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

11 **5. Evaluation.** If the court at a hearing under this section makes a determination of
12 probable cause, the court shall direct that the person be transferred to an appropriate
13 facility for an evaluation of whether the person is a sexually violent predator. The
14 evaluation must be conducted by a person who is determined to be professionally
15 qualified to conduct the evaluation pursuant to rules adopted by the department. When
16 adopting rules regarding professional qualifications, the department shall consult with the
17 Department of Corrections. Rules adopted pursuant to this subsection are routine
18 technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

22 **§3925. Trial**

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

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

31 **3. Confinement.** The person alleged to be a sexually violent predator must be
32 confined in a secure facility for the duration of the trial under this section.

33 **4. Right to examination.** If a person is subjected to an evaluation under section
34 3924, subsection 5, the person may retain experts or professional persons to perform an
35 examination on the person's behalf. If the person wishes to be examined by an expert or
36 professional person of the person's choice, the examiner may have reasonable access to
37 the person for purposes of the examination and to any relevant medical and psychological
38 records and reports. If a person is indigent, the court shall, upon the person's request,

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

3 **5. Right to jury.** The person, the prosecuting attorney or the court may demand that
4 the trial under subsection 1 be before a 12-person jury. If no demand is made, the trial is
5 before the court.

6 **§3926. Determination**

7 **1. Determination; standard of proof.** The court or jury at a trial under section 3925
8 shall determine whether a person is a sexually violent predator. The determination must
9 be made beyond a reasonable doubt. A determination made by a jury must be
10 unanimous.

11 **2. Proof of recent overt act.** If the person alleged to be a sexually violent predator
12 was not in confinement on the date the petition for commitment under section 3923 was
13 filed, the State must prove beyond a reasonable doubt that the person committed a recent
14 overt act.

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

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

26 **5. Release.** If the court or jury is not satisfied beyond a reasonable doubt that the
27 person is a sexually violent predator pursuant to this section, the court shall direct the
28 person's release.

29 **§3927. Persons who were incompetent to stand trial**

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

36 **2. Procedures.** The hearing required by subsection 1 must comply with all the
37 procedures specified in section 3926. In addition the rules of evidence applicable in
38 criminal cases apply, and all constitutional rights available to defendants at criminal trials
39 apply, other than the right not to be tried while incompetent.

1 **3. Findings.** After hearing evidence pursuant to subsection 1 on the question of
2 whether the person committed the act or acts originally charged, the court shall make
3 specific findings on:

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

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

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

11 **4. Effect of determination.** If, after the conclusion of the hearing required under
12 subsection 1, on whether the person committed the act or acts originally charged, the
13 court finds beyond a reasonable doubt that the person did commit the act or acts charged,
14 the court shall enter a final order and may proceed to consider whether the person should
15 be committed pursuant to this subchapter.

16 **§3928. Place of confinement**

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

21 **§3929. Annual examination of committed person**

22 A committed person must be examined at least once each year to determine the
23 person's mental condition and consider whether conditional release to a less restrictive
24 alternative is in the best interest of the person and will adequately protect the community.
25 A report of the examination must be submitted to the court that committed the person.
26 The person may retain or, if the person is indigent and so requests, the court shall appoint
27 an expert or a professional person to examine the person. The expert or professional
28 person must have access to all records concerning the person.

29 **§3930. Rights of committed person**

30 **1. Legal rights.** A committed person does not forfeit any legal right or suffer any
31 legal disability as a result of any actions taken under this subchapter except as specifically
32 provided in this subchapter.

33 **2. Right to care and treatment.** A committed person has the right to adequate care
34 and individualized treatment. The department shall keep records of medical, expert and
35 professional care and treatment received by a committed person and shall keep copies of
36 all reports of periodic examinations made pursuant to this subchapter. Records kept by
37 the department under this section must be made available to the committed person, the
38 committed person's attorney, the prosecuting attorney, the court, the protection and
39 advocacy agency designated under Title 5, chapter 511 or an expert or professional
40 person who demonstrates a need for access to the records.

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

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

15 **§3931. Petition for release or discharge**

16 **1. Petition by commissioner.** If the commissioner determines that a committed
17 person's mental abnormality or personality disorder has changed so that the person is not
18 likely to engage in predatory acts of sexual violence if conditionally released to a less
19 restrictive alternative or unconditionally discharged, the commissioner shall authorize the
20 person to petition the court for conditional release to a less restrictive alternative or
21 unconditional discharge.

22 **A.** The petition for conditional release or unconditional discharge under this
23 subsection must be served upon the court and the prosecuting attorney.

24 **B.** The court, upon receipt of the petition for conditional release or unconditional
25 discharge under this subsection, shall order a hearing within 45 days.

26 **C.** The prosecuting attorney shall represent the State at the hearing under paragraph
27 B and may have the petitioner examined by an expert or professional person of the
28 prosecuting attorney's choice.

29 **D.** The hearing under paragraph B must be before a jury if requested by either the
30 petitioner or the prosecuting attorney.

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

36 **2. Petition by committed person.** The committed person may petition the court for
37 conditional release to a less restrictive alternative or unconditional discharge without the
38 commissioner's approval.

39 **A.** The commissioner shall provide the committed person with written annual notice
40 of the person's right to petition the court for conditional release to a less restrictive

1 alternative or unconditional discharge over the commissioner's objection. The notice
2 must contain a waiver of rights.

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

9 C. The committed person has the right to have an attorney represent the person at the
10 preliminary hearing required in paragraph B, but the person is not entitled to be
11 present at the preliminary hearing.

12 **3. Hearing.** If the court at the preliminary hearing under subsection 1, paragraph B
13 determines that probable cause exists to believe that the person's mental abnormality or
14 personality disorder has changed so that the person is not likely to engage in predatory
15 acts of sexual violence if conditionally released to a less restrictive alternative or
16 unconditionally discharged, the court shall conduct a hearing on the issue.

17 A. At the hearing, the committed person may be present and has the same
18 constitutional protections that are afforded at the initial commitment proceeding
19 under this subchapter.

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

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

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

28 **§3932. Court jurisdiction**

29 The jurisdiction of the court over a committed person continues until the person is
30 unconditionally discharged.

31 **§3933. Conditional release to less restrictive alternative; proceedings**

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

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

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

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

7 D. The committed person is willing to comply with the treatment provider and all
8 requirements imposed by the treatment provider and the court; and

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

12 **2. Decision.** The court, in a proceeding concerning conditional release under this
13 section, shall direct as follows.

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

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

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

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

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

35 **3. Treatment provider other than State.** If the treatment provider designated to
36 provide inpatient or outpatient treatment or to monitor or supervise any other terms and
37 conditions of a committed person's placement in a less restrictive alternative is other than
38 the department or the Department of Corrections, that treatment provider must agree in
39 writing to provide the treatment.

40 **4. Conditions of release.** Before authorizing release to a less restrictive alternative,
41 the court shall impose conditions. A copy of the conditions of release must be given to

1 the person and the person's designated service provider. The court shall order the
2 department or the Department of Corrections to investigate the less restrictive alternative
3 and recommend any additional conditions to the court. These conditions include, but are
4 not limited to, the following:

5 A. Specification of residence;

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

7 C. Prohibition of alcohol or other drug use;

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

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

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

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

16 **5. Report by treatment provider.** A treatment provider designated to provide
17 inpatient or outpatient treatment shall submit monthly, or as otherwise directed by the
18 court, a report stating whether the conditionally released person is complying with the
19 terms and conditions of the release to a less restrictive alternative. The report must be
20 submitted to the department, the facility from which the person was released, the
21 prosecuting attorney and the person's corrections supervisor.

22 **6. Review of release.** The release of a conditionally released person to a less
23 restrictive alternative must be reviewed by the court that released the person no later than
24 one year after the conditional release and annually thereafter until the person is
25 unconditionally discharged. Review may occur in a shorter time or more frequently, if
26 the court, in its discretion on its own motion or on motion of the conditionally released
27 person, the commissioner or the prosecuting attorney determines a shorter review time is
28 desirable. The sole question to be determined by the court is whether the conditional
29 release to a less restrictive alternative should be continued. The court in making its
30 determination must be aided by the periodic reports filed pursuant to subsection 5 and the
31 opinions of the commissioner and other experts or professional persons.

32 **§3935. Revocation of conditional release**

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

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

12 **3. Hearing.** The court, upon receiving notification of a person's apprehension under
13 subsection 2, shall promptly schedule a hearing. The issue to be determined at the
14 hearing is whether the State has proven by a preponderance of the evidence that the
15 conditionally released person did not comply with the terms and conditions of release.
16 Hearsay evidence is admissible if the court finds that it is reliable. At the hearing, the
17 court shall determine whether the person should continue to be conditionally released on
18 the same or modified conditions or whether conditional release should be revoked and the
19 person committed to total confinement.

20 **§3936. Reimbursement of department**

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

25 **§3937. Record check for employees of secure facility**

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

32 **§3938. Release of information**

33 The commissioner may release any relevant information obtained under this
34 subchapter if the commissioner determines that the release is necessary to protect the
35 public.

36 **§3939. Notice of conditional release, discharge or escape**

37 **1. Standard notice.** At the earliest possible time, and no later than 30 days before
38 conditional release or unconditional discharge, the department shall send written notice of
39 conditional release or unconditional discharge to:

40 A. The State Police;

1 B. The local law enforcement agency in the municipality in which the committed
2 person will reside, work and attend school, as applicable;

3 C. The sheriff of the county where the committed person will reside, work and attend
4 school, as applicable; and

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

7 **2. Notice of escape.** If the committed person has escaped, at the earliest possible
8 time the department shall send written notice to the State Police, the sheriff of the county
9 where the person was last convicted of a sexually violent offense and the local law
10 enforcement agency and sheriff for the location in which the committed person resided
11 immediately before commitment as a sexually violent predator or immediately before
12 incarceration for the person's most recent offense.

13 **3. Requested notice.** Upon request, the department shall provide notice in the same
14 manner as required under subsection 1 to:

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

17 B. A witness who testified against the committed person in commitment
18 proceedings; or

19 C. Any person specified in writing by the prosecuting attorney.

20 The department shall send the notice required by this subsection to the last address
21 provided to the department by the person requesting notice.

22 **4. Confidentiality of request.** Information regarding persons requesting notice
23 under subsection 3 and the notice are confidential and may not be disclosed to any
24 person, including the committed person.

25 **5. Recapture.** If the committed person is recaptured after escape, the department
26 shall notify a person receiving notice under this section as soon as possible, but no later
27 than 2 working days after the department learns of the recapture.

28 **6. Minor.** If the person to be notified under subsection 3 has not attained 18 years of
29 age, the notice required by this section must be sent to the person having legal custody of
30 the minor.

31 **§3940. Escorted leave**

32 **1. Escorted leave authorized.** The person in charge of a facility to which a
33 committed person is confined under this subchapter may grant, subject to approval of the
34 commissioner, an escorted leave of absence to that committed person for the following
35 purposes:

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

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

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

5 **2. Conditions.** A committed person granted an escorted leave of absence under this
6 section must be under the continuous supervision of an escort. The escort must be a
7 correctional officer or other person approved by the commissioner. The escort shall
8 maintain visual or auditory contact with the person at all times. Contact may not be aided
9 by any electronic or other device.

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

13 **4. Restricted to State.** A committed person granted an escorted leave of absence
14 may not leave the State unless the leave is approved by the court.

15 **5. Reimbursement of costs.** The commissioner may seek reimbursement from the
16 committed person or members of the family of the committed person for the costs of an
17 escorted leave of absence unless the committed person and the committed person's family
18 members are indigent and without resources sufficient to reimburse the State for the costs
19 of the leave of absence.

20 **Sec. 4. Licensing of group homes and similar living situations for persons**
21 **convicted of sex offenses.** The Legislature recognizes the existing danger of persons
22 who have been convicted of sex offenses who are now living in the community and are
23 residing in group homes and similar living situations where no appropriate counseling
24 and treatment are provided. In an effort to address this concern and ensure that persons
25 convicted of sex offenses who live in group homes and similar living situations receive
26 essential services and are not in situations that will in fact increase the chances of their
27 recidivating, the Department of Corrections and the Department of Health and Human
28 Services shall establish licensing standards and necessary legislation to implement those
29 standards. The licensing standards must apply to all group and similar residential-style
30 homes, including those maintained by for-profit and nonprofit organizations. The
31 departments shall report their recommendations for licensing and necessary implementing
32 legislation to the Joint Standing Committee on Criminal Justice and Public Safety and the
33 Joint Standing Committee on Health and Human Services by December 1, 2007. Upon
34 receipt of the recommendations, the Joint Standing Committee on Criminal Justice and
35 Public Safety and the Joint Standing Committee on Health and Human Services may
36 submit legislation to the Second Regular Session of the 123rd Legislature.

37 **SUMMARY**

38 This bill provides a procedure for the commitment of a person determined to be a
39 sexually violent predator if a court finds that the person has a mental abnormality or
40 personality disorder that makes it likely that the person will engage in predatory acts of
41 sexual violence if not confined in a secure facility. Protections are provided to a person

1 subject to commitment. Care and treatment must be provided, and the commitment is
2 subject to annual review. Notice of release or discharge is required for victims, witnesses
3 and other persons identified by the prosecuting attorney. This bill designates both the
4 Commissioner of Corrections and the Commissioner of Health and Human Services as
5 responsible for providing secure facilities for sexually violent predators. This bill
6 coordinates release from a secure facility for sexually violent predators with supervised
7 release for sex offenders under Title 17-A, chapter 50.

8 This bill also directs the Department of Corrections and the Department of Health and
9 Human Services to establish licensing standards and necessary legislation to implement
10 those standards for group and similar residential-style homes in which persons who have
11 been convicted of sex offenses are residing. The purpose of creating licensing standards
12 is to ensure that persons who have been convicted of sex offenses and are now living in
13 the community and are residing in group homes and similar living situations receive
14 appropriate counseling and treatment, instead of living in residential situations that in fact
15 increase the chances of their recidivating. The licensing standards must apply to all
16 group and residential-style homes, including those maintained by for-profit and nonprofit
17 organizations. The departments shall report their recommendations for licensing and
18 necessary implementing legislation to the Joint Standing Committee on Criminal Justice
19 and Public Safety and the Joint Standing Committee on Health and Human Services by
20 December 1, 2007. Upon receipt of the recommendations, the Joint Standing Committee
21 on Criminal Justice and Public Safety and the Joint Standing Committee Health and
22 Human Services may submit legislation to the Second Regular Session of the 123rd
23 Legislature.