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SFA**BILL ANALYSIS**

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Senate Bill 649 (as introduced 7-2-97)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 5-18-98

CONTENT

The bill would amend the Mental Health Code to establish procedures for the civil commitment of a violent predator, after he or she had served a criminal sentence. The bill would do all of the following:

- **Require the prosecuting attorney to be notified when a violent offender who could be a "violent predator" under the bill was within three months of release from incarceration.**
- **Require a trial to determine whether a person was a violent predator.**
- **Provide for the commitment of a person determined to be a violent predator.**
- **Include separate provisions for the commitment of a violent predator who was found incompetent to stand trial for, rather than convicted of, a violent offense.**
- **Establish provisions for the filing and review of a petition for release.**
- **Specify that the Department of Community Health (DCH) would be responsible for costs of commitment, but could obtain reimbursement from financially responsible parties.**
- **Require the DCH to release relevant information necessary to protect the public.**

Definitions

"Violent predator" would mean a person who had been convicted of or charged with a "violent offense" and who suffered from a "mental abnormality or personality disorder" that made him or her likely to engage in habitual "predatory acts" of violence.

"Violent offense" would mean any of the following:

- Assault with intent to commit murder or with intent to commit great bodily harm less than murder (MCL 750.83 & 750.84).
- First-degree child abuse (MCL 750.136b(2)).
- Involvement in child sexually abusive activity or materials (MCL 750.145c).
- Attempted murder, solicitation to commit murder, first-degree murder, second-degree murder, or causing a death due to explosives (MCL 750.91, 750.157b(2), 750.316, 750.317, 750.327, & 750.328).
- Kidnapping or kidnapping a child under 14 years of age (MCL 750.349 & 750.350).
- Poisoning another person with an amount sufficient to cause death (MCL 750.436(2)).
- First-, second-, or third degree criminal sexual conduct (CSC) or assault with intent to commit CSC (MCL 750.520b, 750.520c, 750.520d, & 750.520g).
- Armed robbery with aggravated assault (MCL 750.529).

Violent offense also would include a felony under Federal law or the law of another state substantially corresponding to one of those offenses; any felony, if the person had a prior conviction for a crime involving the death of another person or CSC involving sexual penetration; and any other felony under Michigan law that, at trial, was determined beyond a reasonable doubt to have been sexually motivated.

"Mental abnormality or personality disorder" would mean a congenital or acquired condition that affected a person's emotional or volitional capacity and predisposed him or her to commit violent offenses to a degree that rendered the person a menace to the health and safety of others.

"Predatory act" would mean an act directed toward a stranger or a person with whom a relationship had been established or promoted for the primary purpose of victimization.

Notice and Petition

If an agency that had jurisdiction over a person who was convicted of or charged with a violent offense determined that the person could be a violent predator, the agency, within three months before the person's anticipated release date, would have to provide written notification of the date of release to the prosecuting attorney of the county in which the person was charged. ("Agency" would mean a State department or agency that was authorized to direct the release of a person who was serving a sentence or term of confinement or who was receiving treatment.)

The prosecuting attorney, or the Attorney General if requested by the prosecuting attorney, could file a petition alleging that the person was a violent predator and stating sufficient facts to support the allegation, if one or more of the following applied:

- The person was convicted of a violent offense and his or her sentence was about to expire, or had expired, on or after January 1, 1998.
- The person was found to have committed a violent offense as a juvenile, and his or her term of confinement was about to expire, or had expired, on or after January 1, 1998.
- The person was charged with a violent offense, had been determined to be incompetent to stand trial, and was about to be released, or had been released, on or after January 1, 1998.
- The person was found not guilty of a violent offense by reason of insanity, he or she was about to be released, or had been released, on or after January 1, 1998, and it appeared that he or she could be a violent predator.

Upon the filing a petition under the bill, the judge would have to determine whether there was probable cause to believe that the person named in the petition was a violent predator. If the judge determined that probable cause existed, he or she would have to order that the person be taken into custody and transferred to the DCH Center for Forensic Psychiatry for an evaluation as to whether he or she was a violent predator.

Trial

Within 45 days after a petition was filed, the court would have to conduct a trial to determine whether the person was a violent predator. The person alleged to be a violent predator, the prosecuting

attorney or Attorney General, or the judge would have the right to demand a jury trial. If no jury were demanded, the trial would be before the court. At all stages of the proceedings, a person subject to the bill would be entitled to the assistance of counsel. If the person were indigent, the court would have to appoint counsel to assist him or her.

If a person alleged to be a violent predator were subjected to an examination under the bill, he or she could retain an expert or professional person of his or her choice to perform an examination on his or her behalf. The selected expert or professional could have reasonable access to the person for the purpose of examination, and to all relevant medical and psychological records and reports. If the person were indigent, the court, upon his or her request, would have to assist the person in obtaining an expert or professional to perform an examination or participate in the trial on the person's behalf.

In a trial conducted under the bill, the court or jury would have to determine whether, beyond a reasonable doubt, the person was a violent predator. If the State alleged that the prior violent offense that formed the basis for the petition for commitment was an act that was sexually motivated, the State would have to prove that motivation beyond a reasonable doubt. If the court or jury were not satisfied beyond a reasonable doubt that the person was a violent predator, the court would have to order his or her release.

Commitment

If the court or jury determined that the person was a violent predator, he or she would have to be committed to the custody of the DCH in a secure facility for control, care, and treatment until the person's mental abnormality or personality disorder had changed so that he or she was safe to be at large. The control, care, and treatment would have to be provided at a facility operated by the DCH and could not be located on the grounds of a State mental facility or regional habilitation center unless the Department of Corrections certified that the facility was sufficiently secure for that population. Involuntary detention or commitment of persons under the bill would have to conform to statutory and constitutional requirements for care and treatment.

A person committed under the bill would have to be examined at least once every three years. The person could retain a qualified expert or other professional person to examine him or her. If the

person were indigent and requested it, the court could appoint a qualified expert or other professional to conduct the examination. The expert or professional would have to be given access to all records concerning the person. The DCH would have to provide an annual report to the court that committed the person.

Competency to Stand Trial

If the person named in a petition filed under the bill had been found incompetent to stand trial and were about to be or had been released in accordance with the Code, the court first would have to hear evidence and determine whether the person committed the act or acts charged, if the court did not enter a finding, prior to dismissal, that he or she committed the act or acts. (When a person has been found incompetent to stand trial, the Code provides for his or her detention at the Center for Forensic Psychiatry and requires the charges to be dismissed when the prosecutor notifies the court of his or intention not to prosecute the case or 15 months after the date on which the defendant was originally determined incompetent to stand trial. When charges are dismissed under the 15-month provision, the prosecutor may petition the court for permission to refile the charges within a time equal to one-third of the maximum sentence that the defendant could receive on the charges; if the maximum penalty is imprisonment for life, the prosecutor may petition the court at any time.)

A hearing under the bill on the issue of whether a person found incompetent to stand trial committed the act or acts charged would have to comply with all the procedures specified in the bill, and rules of evidence applicable in criminal cases would apply to the hearing. A person subject to such a hearing would have all constitutional rights available to criminal defendants, other than the right not to be tried while incompetent.

After hearing the evidence, the court would have to make specific findings on whether the person committed the act or acts charged; the extent to which his or her incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify in his or her own behalf; the extent to which the evidence could be reconstructed without the person's assistance; and the strength of the prosecution's case. If, after the hearing, the court found beyond a reasonable doubt that the person committed the act or acts charged, the court would have to enter a final order on that issue, and could proceed to consider whether the person should be civilly committed under the bill. The person could appeal the court's final order.

Petition for Release

If the DCH Director or the director of the facility in which a person was committed under the bill determined that the person's mental abnormality had changed so that he or she was not likely to commit a violent offense if released, the DCH Director or the facility director would have to authorize the person to petition the court for release. The petition would have to be served upon the court and the prosecuting attorney.

Upon receiving a petition for release, the court would have to order a hearing to be held within 45 days. The prosecuting attorney or the Attorney General, if requested by the county, would have to represent the State and would have the right to have the petitioner examined by an expert or professional person of his or her own choice.

A hearing on a petition for release would have to be before a jury, if demanded by either the petitioner or the attorney for the State. The attorney for the State would have the burden of proving beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remained to the extent that the petitioner was not safe to be at large and that, if discharged, would be likely to commit one or more violent offenses.

A person also could petition the court for discharge without the approval of the DCH Director or the facility director. The DCH Director would have to provide the committed person with an annual written notice of his or her right to petition the court for release over the objection of the DCH Director or facility director. The notice would have to contain a waiver of rights. The DCH Director would have to forward the notice and waiver form to the court with the annual report required under the bill.

If a committed person did not affirmatively waive his or her right to petition, the court would have to set a show cause hearing to determine whether there were facts that warranted a hearing on whether the person's condition had changed so that he or she was safe to be at large. The committed person would have a right to legal representation at the show cause hearing, but would not be entitled to be present at that hearing. If the court determined at a show cause hearing that there was probable cause to believe that the person's mental abnormality had changed so that the person was safe to be at large and would not engage in sexually violent offenses if discharged, the court would have to set a hearing on the issue. A committed individual would be entitled to be present at that hearing and to have the benefit of all constitutional protections afforded to him or her at the initial commitment proceeding.

The prosecuting attorney or the Attorney General, if requested by the county, would have to represent the State and would have the right to a jury trial and to have the committed person evaluated by experts chosen by the State. The committed person also would have the right to have experts evaluate him or her on his or her behalf. The court would have to appoint an expert if the person were indigent and requested an appointment. The attorney for the State would have the burden of proving beyond a reasonable doubt that the committed person's mental abnormality had not changed, that the person was not safe to be at large, and that, if released, the person would engage in one or more sexually violent offenses.

Nothing in the bill would prohibit a person from filing a petition for discharge. If a person had previously filed a petition without the approval of the DCH Director or the facility director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the petitioner's condition had not changed sufficiently for him or her to be safe at large, the court would have to deny a subsequent petition unless the petition contained facts upon which a

court could find that the condition of the petitioner had changed so that a hearing was warranted. Upon receiving a first or subsequent petition from a committed person without the approval of the DCH Director or the facility director, the court would have to review the petition and determine if the petition was based on frivolous grounds and, if so, would have to deny the petition without a hearing.

Costs of Commitment

The DCH would be responsible for all costs related to the evaluation and treatment of a person committed to its custody under the bill. The DCH could obtain reimbursement pursuant to Chapter 8 of the Code for the cost and care of treatment of an individual committed to its custody under the bill. (Chapter 8 provides that a "responsible party" is financially liable for the cost of services provided to a person directly by or by contract with the DCH or a community mental health services program. "Responsible party" means a person who is financially liable for services, including the person receiving services, and, as applicable, his or her spouse and the parent or parents of a minor. Chapter 8 also specifies that, if a person is covered by any type of private or public insurance coverage for services provided, the benefits from that coverage are considered to be available to pay the person's financial liability.)

Release of Information

In addition to any other information required to be released under the bill, the DCH would have to release relevant information that was necessary to protect the public concerning a specific violent predator committed under the bill.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill is based on a similar Kansas law that was upheld by the United States Supreme Court last year. The major cost would be due to treatment of those judged to be “violent predators” in a secure mental health facility separate from typical mental health State hospitals.

The cost of treatment for one individual at secure State mental health facilities is in the range of \$60,000 to \$100,000 per year. There is no clear evidence to date that large numbers of similar individuals will be covered by the law in Kansas; the number of those in Michigan who would be institutionalized is likely small, but uncertain.

Fiscal Analyst: S. Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.