

**SUBSTITUTE FOR
SENATE BILL NO. 96**

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding chapter 10A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 10A

SEC. 1060. AS USED IN THIS CHAPTER:

(A) "AGENCY" MEANS THE DEPARTMENT OF CORRECTIONS.

(B) "COURT" MEANS THE COURT IN THIS STATE THAT CONVICTED AN
INDIVIDUAL DESCRIBED IN SECTION 1063 OF THE VIOLENT OFFENSE.

(C) "MENTAL ABNORMALITY" MEANS A CONGENITAL OR ACQUIRED CON-
DITION THAT AFFECTS AN INDIVIDUAL'S EMOTIONAL OR VOLITIONAL
CAPACITY AND THAT PREDISPOSES THE INDIVIDUAL TO COMMIT VIOLENT
OFFENSES TO A DEGREE THAT RENDERS THE INDIVIDUAL A MENACE TO THE
HEALTH AND SAFETY OF OTHERS.

(D) "PREDATORY ACT" MEANS 1 OR MORE ACTS DIRECTED TOWARD AN INDIVIDUAL FOR THE PRIMARY PURPOSE OF CRIMINAL VICTIMIZATION.

(E) "VIOLENT OFFENSE" MEANS 1 OR MORE OF THE FOLLOWING:

(i) A VIOLATION OF SECTION 83 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, CONCERNING ASSAULT.

(ii) A VIOLATION OF SECTION 91, 157B(2), 316, OR 317 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.91, 750.157B, 750.316, AND 750.317, CONCERNING MURDER.

(iii) A VIOLATION OF SECTION 436(2) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.436, CONCERNING POISONING.

(iv) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, CONCERNING CRIMINAL SEXUAL CONDUCT.

(v) A FELONY UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO AN OFFENSE LISTED IN SUBPARAGRAPHS (i) TO (iv).

(F) "VIOLENT PREDATOR" MEANS AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING:

(i) HE OR SHE HAS BEEN CONVICTED OF 1 OF THE FOLLOWING:

(A) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, AND, IN ADDITION, HAS BEEN CONVICTED OF 2 OR MORE ACTS OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE THAT ARE SEPARATE FROM AND DO NOT ARISE OUT OF THE INCIDENT OR INCIDENTS THAT WERE THE BASIS FOR THE VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, AS EVIDENCED BY CERTIFIED COPIES OF THE COURT RECORDS OF CONVICTIONS IN THIS STATE, ANOTHER STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

(B) A VIOLENT OFFENSE OTHER THAN A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, AND, IN ADDITION TO THE CONVICTION FOR THE VIOLENT OFFENSE, HAS COMMITTED 2 OR MORE MURDERS OR VOLUNTARY MANSLAUGHTERS THAT ARE SEPARATE FROM AND DO NOT ARISE OUT OF THE INCIDENT OR INCIDENTS THAT WERE THE BASIS FOR THE VIOLENT OFFENSE, AS EVIDENCED BY CERTIFIED COPIES OF THE COURT RECORDS OF CONVICTIONS IN THIS STATE, ANOTHER STATE, FEDERAL COURT, OR A FOREIGN COUNTRY.

(ii) HE OR SHE SUFFERS FROM A MENTAL ABNORMALITY THAT MAKES THE INDIVIDUAL LIKELY TO ENGAGE IN FUTURE PREDATORY ACTS OF VIOLENCE.

1 SEC. 1061. (1) THE LEGISLATURE FINDS THAT A SMALL BUT
2 EXTREMELY DANGEROUS GROUP OF VIOLENT PREDATORS EXISTS WHO DO NOT
3 HAVE A MENTAL ILLNESS THAT RENDERS THEM APPROPRIATE FOR THE
4 EXISTING CIVIL COMMITMENT PROCESS THAT IS DESIGNED TO PROVIDE
5 TREATMENT TO INDIVIDUALS WITH SERIOUS MENTAL ILLNESS. THE LEGIS-
6 LATURE ALSO FINDS THAT THE LIKELIHOOD OF A VIOLENT PREDATOR
7 ENGAGING IN REPEAT ACTS OF PREDATORY VIOLENCE IS HIGH. THE LEG-
8 ISLATURE ALSO FINDS THAT THE PROGNOSIS FOR CURING THIS SMALL
9 GROUP OF VIOLENT PREDATORS IS POOR, THAT THE TREATMENT NEEDS OF
10 THIS POPULATION ARE VERY LONG-TERM, AND THAT THE TREATMENT MODAL-
11 ITIES FOR THIS POPULATION ARE VERY DIFFERENT FROM THE TRADITIONAL
12 TREATMENT MODALITIES FOR INDIVIDUALS WHO ARE APPROPRIATE FOR COM-
13 MITMENT AND TREATMENT UNDER THIS CODE.

14 (2) OTHER THAN THE DEFINITION SECTIONS OF CHAPTER 1, THE
15 OTHER CHAPTERS OF THIS CODE DO NOT APPLY TO THIS CHAPTER AND THIS
16 CHAPTER DOES NOT APPLY TO THE OTHER CHAPTERS OF THIS CODE.

17 SEC. 1062. (1) IF THE AGENCY THAT HAS JURISDICTION OVER AN
18 INDIVIDUAL DESCRIBED IN SECTION 1063 DETERMINES THAT THE INDIVID-
19 UAL MAY BE A VIOLENT PREDATOR, THEN NOT LATER THAN 6 MONTHS
20 BEFORE THE ANTICIPATED DATE OF THE EXPIRATION OF THE INDIVIDUAL'S
21 MAXIMUM SENTENCE AND ANTICIPATED DATE OF RELEASE BY THE AGENCY,
22 THE AGENCY SHALL PROVIDE WRITTEN NOTIFICATION OF THE ANTICIPATED
23 DATE OF RELEASE TO THE ATTORNEY GENERAL AND TO EACH VICTIM WHO
24 HAS REQUESTED NOTIFICATION OF ANY CHANGE IN THE INDIVIDUAL'S
25 STATUS UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL
26 780.751 TO 780.834.

1 (2) IF AN AGENCY OR AN EMPLOYEE OF THAT AGENCY IN GOOD FAITH
2 MAKES A DETERMINATION OR GIVES NOTICE IN COMPLIANCE WITH
3 SUBSECTION (1), THE AGENCY OR THE EMPLOYEE IS NOT LIABLE IN A
4 CIVIL ACTION FOR DAMAGES BASED ON THE DETERMINATION OR NOTICE.

5 SEC. 1063. THE ATTORNEY GENERAL MAY FILE WITH THE COURT A
6 PETITION ALLEGING THAT AN INDIVIDUAL IS A VIOLENT PREDATOR AND
7 STATING SUFFICIENT FACTS TO SUPPORT THE ALLEGATION, IF THE INDI-
8 VIDUAL WAS CONVICTED OF A VIOLENT OFFENSE, AND HIS OR HER MAXIMUM
9 SENTENCE WILL EXPIRE OR HAS EXPIRED, ON OR AFTER JANUARY 1, 2000,
10 AND FOR A VIOLENT OFFENSE DESCRIBED IN SECTION 1060(F)(i)(B), IN
ADDITION TO THE CONVICTION FOR THE VIOLENT OFFENSE THE
11 INDIVIDUAL HAS COMMITTED 2 OR MORE MURDERS OR VOLUNTARY MAN-
12 SLAUGHTERS THAT ARE SEPARATE FROM AND DO NOT ARISE OUT OF THE
13 INCIDENT OR INCIDENTS THAT WERE THE BASIS FOR THE VIOLENT
14 OFFENSE, AS EVIDENCED BY CERTIFIED COPIES OF THE COURT RECORDS OF
15 CONVICTIONS IN THIS STATE, ANOTHER STATE, FEDERAL COURT, OR A
16 FOREIGN COUNTRY.

17 SEC. 1064. UPON THE FILING OF A PETITION UNDER SECTION
18 1063, THE COURT SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO
19 BELIEVE THAT THE INDIVIDUAL NAMED IN THE PETITION IS A VIOLENT
20 PREDATOR. IF THE DETERMINATION IS MADE THAT SUCH PROBABLE CAUSE
21 EXISTS, THE COURT SHALL ORDER THAT THE INDIVIDUAL BE EVALUATED BY
22 THE CENTER FOR FORENSIC PSYCHIATRY TO DETERMINE WHETHER OR NOT
23 THE INDIVIDUAL IS A VIOLENT PREDATOR. THE AGENCY SHALL ACCEPT
24 THE INDIVIDUAL BACK AFTER THE COMPLETION OF THE EVALUATION. IN
25 NO EVENT SHALL THE INDIVIDUAL BE RELEASED FROM CONFINEMENT BEFORE
26 TRIAL. IF AN INDIVIDUAL'S MAXIMUM SENTENCE WOULD EXPIRE AND HE
27 OR SHE WOULD BE RELEASED BEFORE COMPLETION OF A TRIAL UNDER THIS

1 CHAPTER, THE COURT SHALL ORDER THAT THE INDIVIDUAL BE CONFINED IN
2 A SECURE FACILITY.

3 SEC. 1065. (1) NOT MORE THAN 45 DAYS AFTER THE FILING OF A
4 PETITION UNDER SECTION 1063, THE COURT SHALL CONDUCT A TRIAL TO
5 DETERMINE WHETHER THE INDIVIDUAL IS A VIOLENT PREDATOR. THE
6 INDIVIDUAL, THE ATTORNEY GENERAL, OR THE COURT HAS THE RIGHT TO
7 DEMAND THAT THE TRIAL BE BEFORE A JURY. IF NO JURY DEMAND IS
8 MADE, THE TRIAL SHALL BE BEFORE THE COURT.

9 (2) AT ALL STAGES OF THE PROCEEDINGS UNDER THIS CHAPTER, AN
10 INDIVIDUAL SUBJECT TO THIS CHAPTER IS ENTITLED TO THE ASSISTANCE
11 OF COUNSEL. IF THE INDIVIDUAL IS INDIGENT, THE COURT SHALL
12 APPOINT COUNSEL TO ASSIST HIM OR HER.

13 (3) IF AN INDIVIDUAL IS SUBJECTED TO AN EXAMINATION UNDER
14 THIS CHAPTER, HE OR SHE MAY RETAIN AN EXPERT OR PROFESSIONAL
15 PERSON OF HIS OR HER CHOICE TO PERFORM AN EXAMINATION ON HIS OR
16 HER BEHALF. THE SELECTED EXPERT OR PROFESSIONAL PERSON MAY HAVE
17 REASONABLE ACCESS TO THE INDIVIDUAL FOR THE PURPOSE OF THE EXAMI-
18 NATION, AND TO ALL RELEVANT MEDICAL AND PSYCHOLOGICAL RECORDS AND
19 REPORTS. IF THE INDIVIDUAL IS INDIGENT AND SO REQUESTS, THE
20 COURT SHALL APPOINT A QUALIFIED EXPERT OR PROFESSIONAL PERSON TO
21 PERFORM AN EXAMINATION OR PARTICIPATE IN THE TRIAL ON THE
22 INDIVIDUAL'S BEHALF.

23 SEC. 1066. (1) IN A TRIAL CONDUCTED UNDER SECTION 1065, THE
24 COURT OR JURY SHALL DETERMINE WHETHER, BEYOND A REASONABLE DOUBT,
25 THE INDIVIDUAL IS A VIOLENT PREDATOR.

26 (2) IF THE COURT OR JURY DETERMINES IN A TRIAL CONDUCTED
27 UNDER SECTION 1065 THAT THE INDIVIDUAL IS A VIOLENT PREDATOR, THE

1 INDIVIDUAL SHALL BE COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF
2 COMMUNITY HEALTH IN A SECURE FACILITY FOR CONTROL AND TREATMENT
3 UNTIL SUCH TIME AS THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO
4 CHANGED THAT THE INDIVIDUAL IS SAFE TO BE DISCHARGED AND THE
5 INDIVIDUAL'S PETITION FOR DISCHARGE UNDER THIS CHAPTER IS GRANTED
6 BY THE COURT. THE CONTROL AND TREATMENT SHALL BE PROVIDED AT A
7 FACILITY MANAGED BY, OR UNDER CONTRACT TO, THE DEPARTMENT OF COM-
8 MUNITY HEALTH. THE FACILITY SHALL NOT BE LOCATED ON THE GROUNDS
9 OF A STATE PSYCHIATRIC HOSPITAL OR REGIONAL CENTER FOR DEVELOP-
10 MENTAL DISABILITIES UNLESS THE AGENCY AND THE DEPARTMENT OF COM-
11 MUNITY HEALTH CERTIFY THAT THE FACILITY IS SUFFICIENTLY APPROPRI-
12 ATE AND SECURE FOR THIS INDIVIDUAL.

13 (3) IF THE COURT OR JURY IN A TRIAL CONDUCTED UNDER SECTION
14 1065 IS NOT SATISFIED BEYOND A REASONABLE DOUBT THAT THE INDIVID-
15 UAL IS A VIOLENT PREDATOR, THE COURT SHALL ORDER THE INDIVIDUAL'S
16 RELEASE.

17 SEC. 1067. AN INDIVIDUAL COMMITTED UNDER THIS CHAPTER SHALL
18 BE EXAMINED AT LEAST ONCE EVERY 3 YEARS. THE INDIVIDUAL MAY
19 RETAIN OR, IF HE OR SHE IS INDIGENT AND SO REQUESTS, THE COURT
20 MAY APPOINT, A QUALIFIED EXPERT OR OTHER PROFESSIONAL PERSON TO
21 EXAMINE HIM OR HER. THE EXPERT OR PROFESSIONAL PERSON HAS ACCESS
22 TO ALL PERTINENT RECORDS CONCERNING THE INDIVIDUAL. THE DEPART-
23 MENT OF COMMUNITY HEALTH SHALL PROVIDE AN ANNUAL REPORT TO THE
24 COURT.

25 SEC. 1068. (1) IF THE DIRECTOR OF THE DEPARTMENT OF COMMU-
26 NITY HEALTH DETERMINES THAT THE INDIVIDUAL'S MENTAL ABNORMALITY
27 HAS CHANGED SO THAT THE INDIVIDUAL IS NOT LIKELY TO ENGAGE IN

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Senate Bill No. 96

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1 FUTURE PREDATORY ACTS OF VIOLENCE IF RELEASED, THE DIRECTOR OF
2 THE DEPARTMENT OF COMMUNITY HEALTH SHALL AUTHORIZE THE INDIVIDUAL
3 TO PETITION THE COURT FOR DISCHARGE. THE PETITION SHALL BE
4 SERVED UPON THE COURT AND THE ATTORNEY GENERAL. THE ATTORNEY
5 GENERAL SHALL NOTIFY EACH VICTIM WHO WAS REQUIRED TO BE NOTIFIED
6 BY THE AGENCY UNDER THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87,
7 MCL 780.751 TO 780.834.

8 (2) UPON RECEIPT OF A PETITION FOR DISCHARGE, THE COURT
9 SHALL ORDER A HEARING TO BE HELD WITHIN 45 DAYS OF THE RECEIPT.
10 THE ATTORNEY GENERAL SHALL REPRESENT THE STATE, AND HAS THE RIGHT
11 TO HAVE THE PETITIONER EXAMINED BY AN EXPERT OR PROFESSIONAL
12 PERSON OF HIS OR HER CHOICE.

13 (3) A HEARING UNDER THIS SECTION SHALL BE BEFORE A JURY IF
14 DEMANDED BY EITHER THE PETITIONER OR THE ATTORNEY GENERAL. THE
15 ATTORNEY GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE
16 DOUBT THAT THE PETITIONER'S MENTAL ABNORMALITY REMAINS SO THAT
17 THE PETITIONER IS NOT SAFE TO BE DISCHARGED AND THAT IF DIS-
18 CHARGED IS LIKELY TO COMMIT 1 OR MORE FUTURE PREDATORY ACTS OF
19 VIOLENCE.

20 SEC. 1069. (1) NOTWITHSTANDING SECTION 1068, A COMMITTED
21 INDIVIDUAL MAY PETITION THE COURT FOR DISCHARGE NOT MORE THAN
22 ONCE EVERY 12 MONTHS WITHOUT THE APPROVAL OF THE DIRECTOR OF THE
23 DEPARTMENT OF COMMUNITY HEALTH. THE DIRECTOR OF THE DEPARTMENT
24 OF COMMUNITY HEALTH SHALL PROVIDE THE COMMITTED INDIVIDUAL WITH
25 AN ANNUAL WRITTEN NOTICE OF THE INDIVIDUAL'S RIGHT TO PETITION
26 THE COURT FOR DISCHARGE WITHOUT THE DEPARTMENT DIRECTOR'S
27 APPROVAL. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE

1 DIRECTOR OF THE DEPARTMENT OF COMMUNITY HEALTH SHALL FORWARD THE
2 NOTICE AND WAIVER FORM TO THE COURT WITH THE ANNUAL REPORT
3 REQUIRED UNDER SECTION 1067.

4 (2) IF A COMMITTED INDIVIDUAL PETITIONS FOR DISCHARGE UNDER
5 THIS SECTION, THE COURT SHALL SET A SHOW CAUSE HEARING TO DETER-
6 MINE WHETHER FACTS EXIST THAT WARRANT A HEARING ON WHETHER THE
7 INDIVIDUAL'S CONDITION HAS SO CHANGED THAT HE OR SHE IS SAFE TO
8 BE DISCHARGED. THE COMMITTED INDIVIDUAL HAS A RIGHT TO HAVE AN
9 ATTORNEY REPRESENT HIM OR HER AT THE SHOW CAUSE HEARING BUT IS
10 NOT ENTITLED TO BE PRESENT AT THE SHOW CAUSE HEARING. IF THE
11 COURT AT THE SHOW CAUSE HEARING DETERMINES THAT PROBABLE CAUSE
12 EXISTS TO BELIEVE THAT THE INDIVIDUAL'S MENTAL ABNORMALITY HAS SO
13 CHANGED THAT THE INDIVIDUAL IS SAFE TO BE DISCHARGED AND WILL NOT
14 ENGAGE IN FUTURE PREDATORY ACTS OF VIOLENCE IF DISCHARGED, THEN
15 THE COURT SHALL SET A HEARING ON THE ISSUE. SUBJECT TO
16 SECTION 1070, THE COMMITTED INDIVIDUAL IS ENTITLED TO BE PRESENT
17 AT THE HEARING AND TO HAVE THE BENEFIT OF ALL CONSTITUTIONAL PRO-
18 TECTIONS THAT WERE AFFORDED TO HIM OR HER AT THE INITIAL COMMIT-
19 MENT PROCEEDING. THE ATTORNEY GENERAL SHALL REPRESENT THE STATE
20 AND HAS THE RIGHT TO A JURY TRIAL AND TO HAVE THE COMMITTED INDI-
21 VIDUAL EVALUATED BY EXPERTS CHOSEN BY THE STATE. THE COMMITTED
22 INDIVIDUAL ALSO HAS THE RIGHT TO HAVE EXPERTS EVALUATE HIM OR HER
23 ON HIS OR HER BEHALF. THE COURT SHALL APPOINT AN EXPERT IF THE
24 INDIVIDUAL IS INDIGENT AND REQUESTS AN APPOINTMENT. THE ATTORNEY
25 GENERAL HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT
26 THE COMMITTED INDIVIDUAL'S MENTAL ABNORMALITY HAS NOT CHANGED AND
27 THAT THE INDIVIDUAL IS NOT SAFE TO BE DISCHARGED AND IF

1 DISCHARGED WILL ENGAGE IN 1 OR MORE FUTURE PREDATORY ACTS OF
2 VIOLENCE.

3 SEC. 1070. NOTHING IN THIS CHAPTER PROHIBITS AN INDIVIDUAL
4 FROM FILING A PETITION FOR DISCHARGE UNDER THIS CHAPTER.
5 PURSUANT TO SECTION 1069, IF AN INDIVIDUAL HAS PREVIOUSLY FILED A
6 PETITION FOR DISCHARGE WITHOUT THE APPROVAL OF THE DIRECTOR OF
7 THE DEPARTMENT OF COMMUNITY HEALTH AND THE COURT DETERMINED,
8 EITHER UPON REVIEW OF THE PETITION OR FOLLOWING A HEARING, THAT
9 THE PETITIONER'S PETITION WAS FRIVOLOUS OR THAT THE PETITIONER'S
10 CONDITION HAD NOT SO CHANGED THAT HE OR SHE WAS SAFE TO BE DIS-
11 CHARGED, THEN THE COURT SHALL DENY THE SUBSEQUENT PETITION UNLESS
12 THE PETITION CONTAINS FACTS UPON WHICH A COURT COULD FIND THAT
13 THE CONDITION OF THE PETITIONER HAD SO CHANGED THAT A HEARING WAS
14 WARRANTED. UPON RECEIPT OF A FIRST OR SUBSEQUENT PETITION FROM A
15 COMMITTED INDIVIDUAL WITHOUT THE APPROVAL OF THE DIRECTOR OF THE
16 DEPARTMENT OF COMMUNITY HEALTH OR THE DIRECTOR OF THE FACILITY
17 MANAGED BY THE DEPARTMENT OF COMMUNITY HEALTH, THE COURT SHALL
18 REVIEW THE PETITION AND DETERMINE IF THE PETITION IS BASED UPON
19 FRIVOLOUS GROUNDS AND IF SO SHALL DENY THE PETITION WITHOUT A
20 HEARING.

21 SEC. 1071. IT IS THE INTENT OF THE LEGISLATURE TO SEPARATE
22 AND PRESERVE THE FUNDS APPROPRIATED FOR THE TREATMENT OF INDIVID-
23 UALS UNDER THE OTHER CHAPTERS OF THIS CODE FROM THE FUNDS APPRO-
24 PRIATED FOR THE ADMINISTRATION OF THIS CHAPTER.