

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 854

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Stone” and substitute “Stone, Brochin, Jacobs, Mooney, Raskin, and Simonaire”.

AMENDMENT NO. 2

On page 1, in line 2, strike “and” and substitute a comma; in the same line, after “Registration” insert “, and Commitment”; in line 18, strike “a”; and in the same line, strike “unit” and substitute “units”.

On page 2, in line 6, strike “a”; in the same line, strike “unit” and substitute “units”; in line 21, strike the first “the” and substitute “each”; in line 23, strike “the” and substitute “each”; in line 30, after “information;” insert “altering a certain provision to require the Department to post certain information about a registrant on the Internet; requiring the Department to post on the Internet, in plain language that can be understood without special knowledge of the criminal laws of the State, a description of the crime of a sex offender registrant, excluding details that would identify the victim;”; in line 33, after “person;” insert “creating a procedure in which a person who has been convicted of a sexually violent offense and who suffers from a certain mental abnormality or personality disorder may be placed in the custody of the Secretary of Health and Mental Hygiene until the person meets certain criteria; establishing that a term of extended parole supervision commences on the expiration of a certain term of commitment to a certain State facility; requiring the Commissioner of Correction of the Department of Public Safety and Correctional Services to give notice to the Attorney General before certain persons who have been convicted of certain sexually violent offenses are released from confinement; requiring the Attorney General to determine if certain persons meet the criteria of sexually violent offenders in need of commitment; establishing certain procedures for determining whether persons are sexually violent offenders in need of commitment;”

(Over)

requiring that a review committee of prosecutors and a multidisciplinary team be formed to make recommendations concerning the identification of sexually violent offenders in need of commitment; making the Commissioner and certain other individuals immune from civil liability for acts performed in good faith in carrying out this Act; specifying the criteria for finding a person to be a sexually violent offender in need of commitment; authorizing the Attorney General to petition the circuit court to find probable cause that a certain person is a sexually violent offender in need of commitment; authorizing a court to order a certain person taken into custody if the court determines certain probable cause exists; authorizing a court to conduct a trial under certain circumstances to determine if a certain person is a sexually violent offender in need of commitment; allowing a certain person certain rights at trial; requiring that the standard of proof at a trial to determine whether a person is a sexually violent offender in need of commitment be that of proof beyond a reasonable doubt; requiring that a person who is found to be a sexually violent offender in need of commitment be placed in the custody of the Secretary of Health and Mental Hygiene for control, care, and treatment at a State facility until the mental abnormality or personality disorder of the person has so changed that the person is not likely to engage in a certain act if released; requiring that a certain committed person in a State facility be subject to an annual mental examination and an annual status review hearing; authorizing the court to determine at an annual status review hearing that probable cause exists to believe that the committed person is not likely to engage in certain acts if released; authorizing that a release hearing be held under certain circumstances; establishing the procedures for certain hearings; requiring that the court release a committed person under certain circumstances; providing that certain provisions of this Act have no effect on the operation of certain provisions of the Code;"; in line 36, after "terms;" insert "making certain provisions of this Act subject to a certain contingency;"; in the same line, after "registration" insert "and commitment"; and in line 40, strike "and 11-721" and substitute "11-721, and 11-723".

On page 3, after line 7, insert:

"BY repealing and reenacting, without amendments,

Article – Health – General  
Section 1–101(a), (c), and (k) and 10–101(e) and (h)  
Annotated Code of Maryland  
(2009 Replacement Volume)

BY adding to

Article – Health – General  
Section 10–636 through 10–646 to be under the new part “Part VI. Sexually  
Violent Offender in Need of Commitment”  
Annotated Code of Maryland  
(2009 Replacement Volume)”.

AMENDMENT NO. 3

On page 4, in line 18, after “(F)” insert “(1)”; and after line 20, insert:

**“(2) “HABITUALLY LIVES” INCLUDES ANY PLACE WHERE A PERSON VISITS FOR LONGER THAN 5 HOURS PER VISIT MORE THAN 5 TIMES WITHIN A 30-DAY PERIOD.”.**

On page 17, in line 22, strike the first “the” and substitute “EACH”.

On page 18, in line 1, strike “after”; in line 10, strike “the” and substitute “A”; in lines 13 and 35, in each instance, strike the second “**THE**” and substitute “EACH”; and in line 19, strike “**THE**” and substitute “A”.

On page 19, in line 21, strike the second “the” and substitute “EACH”; and in lines 24 and 28, in each instance, strike “**THE**” and substitute “EACH”.

On page 20, in line 1, after the first “OR” insert “A”; in line 6, strike the first “**THE**” and substitute “A”; in line 14, strike “LOCATION” and substitute “LOCATIONS”;

(Over)

and in lines 19 and 20, strike “address **OR PLACE**” and substitute “**ALL ADDRESSES AND PLACES**”.

On page 25, in line 4, strike the second “the” and substitute “**EACH**”; in line 5, after “reside” insert “**OR HABITUALLY LIVE**”; and in line 33, strike the third “the” and substitute “**EACH**”.

On page 26, in line 33, strike “**THE**” and substitute “**A**”.

On page 27, in line 21, strike the third “the” and substitute “**EACH**”; and in line 27, strike the fourth “the” and substitute “**EACH**”.

On page 28, in lines 9 and 35, in each instance, strike “**THE**” and substitute “**A**”; in line 15, strike the first “**THE**” and substitute “**A**”; and in line 31, strike “**LOCATION**” and substitute “**LOCATIONS**”.

On page 29, in line 8, strike the first “the” and substitute “**EACH**”; and in line 11, after “**OR**” insert “**A**”.

On page 30, in lines 1, 14, and 22, in each instance, strike the first “the” and substitute “**EACH**”.

On page 32, in line 2, strike the second “the” and substitute “**EACH**”; in line 10, strike the second “the” and substitute “**A**”; in line 11, strike “**LIVES**” and substitute “**LIVE**”; in line 20, strike the first “**THE**” and substitute “**A**”; and in the same line, strike “**RESIDES**” and substitute “**LIVES**”.

**AMENDMENT NO. 4**

On page 9, in line 3, strike “**OR THE COMMON LAW OFFENSE OF INDECENT EXPOSURE**”.

AMENDMENT NO. 5

On page 8, strike beginning with the comma in line 34 down through “ADULT” in line 35.

On page 10, in line 8, strike “§ 3-308(B) OR (C),”; in the same line, strike “§ 3-324,” and substitute “§ 3-314”; and in line 15, strike “§ 3-308(B)(1) OR (C),”.

On page 11, in line 6, strike “§ 3-308,”.

AMENDMENT NO. 6

On page 10, in line 35, strike “OR”.

On page 11, in line 2, strike “§ 3-322,”; and strike beginning with the comma in line 3 down through “SODOMY;” in line 4 and substitute “;OR”

(III) THE COMMON LAW OFFENSE OF SODOMY OR § 3-322 OF THE CRIMINAL LAW ARTICLE IF THE OFFENSE WAS COMMITTED WITH FORCE OR THREAT OF FORCE;

AMENDMENT NO. 7

On page 18, in line 17, strike “24 HOURS” and substitute “3 DAYS”.

AMENDMENT NO. 8

On page 31, in line 22, after “a” insert “FACTUAL”; in line 29, strike “may” and substitute “SHALL”; in the same line, after “Internet” insert “:

(1);

in line 30, strike “, crime,”; and in the same line, after “information” insert “;AND”

**(2) IN PLAIN LANGUAGE THAT CAN BE UNDERSTOOD WITHOUT SPECIAL KNOWLEDGE OF THE CRIMINAL LAWS OF THE STATE, A FACTUAL DESCRIPTION OF THE CRIME OF THE OFFENDER THAT IS THE BASIS FOR THE REGISTRATION, EXCLUDING DETAILS THAT WOULD IDENTIFY THE VICTIM**".

AMENDMENT NO. 9

On page 33, after line 5, insert:

"SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure

11-701.

**[(i)] (K)** (1) Except as otherwise provided in this subsection, "release" means any type of release from the custody of a supervising authority.

(2) "Release" means:

(i) release on parole;

(ii) mandatory supervision release;

(iii) release from a correctional facility with no required period of supervision;

(iv) work release;

(v) placement on home detention; [and]

(vi) the first instance of entry into the community that is part of a supervising authority's graduated release program; AND

**(VII) RELEASE FROM THE CUSTODY OF THE SECRETARY OF HEALTH AND MENTAL HYGIENE.**

(3) "Release" does not include:

(i) an escape; or

(ii) leave that is granted on an emergency basis.

11-723.

(a) Except where a term of natural life without the possibility of parole is imposed, a sentence for an extended parole supervision offender shall include a term of extended sexual offender parole supervision.

(b) The term of extended sexual offender parole supervision for a defendant sentenced on or after August 1, 2006, shall:

(1) be a minimum of 3 years to a maximum of a term of life; and

(2) commence on the expiration of the later of any term of imprisonment, probation, parole, [or] mandatory supervision, OR COMMITMENT TO A FACILITY OWNED AND OPERATED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH § 10-641 OF THE HEALTH - GENERAL ARTICLE.

Article - Health - General

(Over)

1-101.

- (a) In this article the following words have the meanings indicated.
- (c) “Department” means the Department of Health and Mental Hygiene.
- (k) “Secretary” means the Secretary of Health and Mental Hygiene.

10-101.

(e) (1) Except as otherwise provided in this title, “facility” means any public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders.

(2) “Facility” does not include a Veterans’ Administration hospital.

(h) “State facility” means a facility that is owned or operated by the Department.

**10-634. RESERVED.**

**10-635. RESERVED.**

**PART VI. SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.**

**10-636.**

**(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**



**(B) “COMMISSIONER” MEANS THE COMMISSIONER OF CORRECTION OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

**(C) “COMMITTED PERSON” MEANS A PERSON WHO HAS BEEN FOUND TO BE A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT UNDER § 10-638 OF THIS SUBTITLE AND HAS BEEN COMMITTED TO A STATE FACILITY.**

**(D) “MENTAL ABNORMALITY” MEANS A CONGENITAL OR ACQUIRED CONDITION THAT AFFECTS EMOTIONAL OR VOLITIONAL CAPACITY TO PREDISPOSE A PERSON TO COMMIT A SEXUALLY VIOLENT OFFENSE IN A DEGREE THAT MAKES THE PERSON A MENACE TO THE HEALTH AND SAFETY OF OTHERS.**

**(E) “PREDATORY ACT” MEANS AN ACT DIRECTED TOWARD:**

**(1) A STRANGER; OR**

**(2) AN INDIVIDUAL WITH WHOM A RELATIONSHIP HAS BEEN ESTABLISHED OR PROMOTED FOR THE PRIMARY PURPOSE OF VICTIMIZATION.**

**(F) “SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT” MEANS AN INDIVIDUAL WHO HAS COMMITTED A SEXUALLY VIOLENT OFFENSE AND WHO IS PLACED IN THE CUSTODY OF THE SECRETARY IN ACCORDANCE WITH § 10-643 OF THIS SUBTITLE.**

**(G) “SEXUALLY VIOLENT OFFENSE” HAS THE MEANING STATED IN § 11-701(L) OF THE CRIMINAL PROCEDURE ARTICLE.**

**10-637.**

(Over)

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER SHALL GIVE WRITTEN NOTICE TO THE ATTORNEY GENERAL AT LEAST 90 DAYS BEFORE THE ANTICIPATED RELEASE FROM A CORRECTIONAL FACILITY OF A PERSON WHO HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE.

(B) IF A PERSON IS RETURNED TO A CORRECTIONAL FACILITY FOR NOT MORE THAN 90 DAYS AS A RESULT OF REVOCATION OF POSTRELEASE SUPERVISION, THE COMMISSIONER SHALL GIVE WRITTEN NOTICE AS SOON AS PRACTICABLE.

10-638.

A PERSON IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT IF THE PERSON:

(1) HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE;  
AND

(2) SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER, AS DETERMINED UNDER § 10-639 OF THIS SUBTITLE, THAT MAKES THE PERSON LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE.

10-639.

(A) THE ATTORNEY GENERAL SHALL DETERMINE WHETHER A PERSON ABOUT WHOM THE COMMISSIONER GIVES NOTICE UNDER § 10-637 OF THIS SUBTITLE MEETS THE CRITERIA OF A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.

(B) TO MAKE THIS DETERMINATION, THE ATTORNEY GENERAL SHALL RECEIVE RECOMMENDATIONS FROM:

(1) A REVIEW COMMITTEE OF PROSECUTORS, TO BE APPOINTED BY THE ATTORNEY GENERAL; AND

(2) A MULTIDISCIPLINARY TEAM, TO BE APPOINTED BY THE COMMISSIONER FROM REPRESENTATIVES OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

10-640.

THE COMMISSIONER, EMPLOYEES AND OFFICIALS OF THE DIVISION OF CORRECTION, MEMBERS AND STAFF OF THE MULTIDISCIPLINARY TEAM AND THE REVIEW COMMITTEE OF PROSECUTORS, AND PERSONS WHO CONTRACT OR VOLUNTEER FOR SERVICES ARE NOT CIVILLY LIABLE FOR ACTS PERFORMED IN GOOD FAITH IN CARRYING OUT THIS PART.

10-641.

(A) WITHIN 75 DAYS AFTER THE ATTORNEY GENERAL RECEIVES WRITTEN NOTICE FROM THE COMMISSIONER UNDER § 10-637 OF THIS SUBTITLE, THE ATTORNEY GENERAL MAY PETITION THE CIRCUIT COURT TO FIND THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT THE PERSON NAMED IN THE PETITION IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.

(B) IF THE COURT FINDS PROBABLE CAUSE EXISTS, THE COURT SHALL:

(Over)

(1) DIRECT THAT THE PERSON BE TAKEN INTO THE CUSTODY OF THE SECRETARY; AND

(2) CONDUCT A TRIAL WITHIN 60 DAYS AFTER THE DATE OF THE PROBABLE CAUSE HEARING TO DETERMINE THE STATUS OF THE PERSON AS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.

(C) THE PERSON NAMED IN THE PETITION SHALL BE ENTITLED TO BE REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE WITNESSES, AND TO VIEW AND COPY ALL PETITIONS AND REPORTS IN THE COURT FILE.

10-642.

(A) THE RULES OF EVIDENCE SHALL APPLY TO A TRIAL HELD UNDER THIS SECTION.

(B) IF THE PERSON NAMED IN THE PETITION IS INDIGENT, THE COURT SHALL APPOINT COUNSEL.

(C) (1) A PERSON NAMED IN THE PETITION MAY RETAIN AN EXPERT TO PERFORM AN EXAMINATION.

(2) IF A PERSON NAMED IN THE PETITION WISHES TO BE EXAMINED BY AN EXPERT OR OTHER INDIVIDUAL CHOSEN BY THE PERSON, THE EXAMINER SHALL BE ALLOWED TO HAVE REASONABLE ACCESS TO THE PERSON AS WELL AS TO RELEVANT MEDICAL AND PSYCHOLOGICAL RECORDS AND REPORTS.

(3) THE COURT SHALL ASSIST AN INDIGENT PERSON TO OBTAIN AN EXPERT OR OTHER INDIVIDUAL TO PERFORM AN EXAMINATION OR PARTICIPATE IN THE TRIAL ON BEHALF OF THE PERSON IF THE COURT DETERMINES THE SERVICES ARE NECESSARY AND THE REQUESTED COMPENSATION FOR THE SERVICES IS REASONABLE.

(D) THE PERSON NAMED IN THE PETITION, THE ATTORNEY GENERAL, AND THE JUDGE ARE ENTITLED TO DEMAND THAT THE TRIAL BE BEFORE A JURY.

(E) AT A TRIAL UNDER THIS SECTION, THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON NAMED IN THE PETITION IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT.

10-643.

IF THE COURT OR JURY DETERMINES THAT A PERSON IS A SEXUALLY VIOLENT OFFENDER IN NEED OF COMMITMENT, THE PERSON SHALL BE PLACED IN THE CUSTODY OF THE SECRETARY FOR CONTROL, CARE, AND TREATMENT AT A STATE FACILITY UNTIL THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE PERSON HAS SO CHANGED THAT THE PERSON IS NOT LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE IF RELEASED.

10-644.

(A) (1) A COMMITTED PERSON IS SUBJECT TO AN ANNUAL MENTAL EXAMINATION IN A STATE FACILITY.

(2) AN OFFICIAL DESIGNATED BY THE PERSON IN CHARGE OF THE STATE FACILITY SHALL COMPLETE A REPORT OF THE MENTAL EXAMINATION AND SHALL FILE A COPY OF THE REPORT WITH THE COURT THAT ORDERED THE COMMITTED PERSON TO A STATE FACILITY UNDER THIS PART.

(B) THE COURT SHALL CONDUCT AN ANNUAL STATUS REVIEW HEARING FOR EACH COMMITTED PERSON.

(C) A COMMITTED PERSON SHALL BE ENTITLED TO PETITION THE COURT FOR DISCHARGE AT THE ANNUAL STATUS REVIEW HEARING OF THE COMMITTED PERSON.

(D) (1) THE SECRETARY SHALL PROVIDE THE COMMITTED PERSON WITH AN ANNUAL WRITTEN NOTICE OF THE RIGHT OF THE COMMITTED PERSON TO PETITION THE COURT FOR RELEASE.

(2) THE SECRETARY SHALL FORWARD THE NOTICE TO THE COURT WITH THE ANNUAL REPORT.

(3) THE COMMITTED PERSON IS ENTITLED TO AN ATTORNEY TO REPRESENT THE COMMITTED PERSON AT THE ANNUAL STATUS REVIEW HEARING, BUT THE COMMITTED PERSON IS NOT ENTITLED TO BE PRESENT AT THE HEARING.

10-645.

(A) (1) THE COURT SHALL SET A RELEASE HEARING IF THE COURT AT THE ANNUAL STATUS REVIEW HEARING DETERMINES THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE COMMITTED PERSON HAS CHANGED SO THAT THE

COMMITTED PERSON IS NOT LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE IF RELEASED.

(2) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED TO BE PRESENT AND TO USE ALL OF THE PROTECTIONS, INCLUDING THE USE OF EXPERT WITNESSES, THAT WERE AVAILABLE AT THE INITIAL HEARING UNDER § 10-642 OF THIS SUBTITLE.

(3) THE ATTORNEY GENERAL:

(I) SHALL REPRESENT THE STATE AT THE RELEASE HEARING;

(II) MAY REQUEST A JURY TRIAL; AND

(III) MAY REQUEST THAT THE COMMITTED PERSON BE EVALUATED BY EXPERTS CHOSEN BY THE STATE.

(4) THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE MENTAL ABNORMALITY OR PERSONALITY DISORDER OF THE COMMITTED PERSON REMAINS SO SEVERE AS TO MAKE THE COMMITTED PERSON LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE IF RELEASED.

(B) THE COURT SHALL RELEASE A COMMITTED PERSON FROM CUSTODY IF THE COURT FINDS AT A RELEASE HEARING THAT THE STATE HAS NOT PROVEN BEYOND A REASONABLE DOUBT THAT THE COMMITTED PERSON IS NOT SAFE TO BE AT LARGE OR IS LIKELY TO ENGAGE IN A PREDATORY ACT INVOLVING A SEXUALLY VIOLENT OFFENSE IF RELEASED.

(Over)

10-646.

THIS PART DOES NOT AFFECT THE OPERATION OF TITLE 11, SUBTITLE 7  
OF THE CRIMINAL PROCEDURE ARTICLE.”;

in line 6, strike “2.” and substitute “3.”; after line 11, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2011, contingent on the Governor providing full funding for the civil commitment provisions of this Act beginning with the 2012 fiscal year and, if funding is not provided, Section 2 of this Act shall be null and void without the necessity of further action by the General Assembly.”;

in line 12, strike “3.” and substitute “5.”; and in the same line, after “That” insert “, except as provided in Section 4 of this Act.”.