**South Carolina General Assembly**

118th Session, 2009-2010

**A158, R185, S931**

**STATUS INFORMATION**

General Bill

Sponsors: Senator L. Martin

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Companion/Similar bill(s): 4199

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Introduced in the House on March 9, 2010

Last Amended on March 4, 2010

Passed by the General Assembly on April 22, 2010

Governor's Action: May 12, 2010, Signed

Summary: Sexually violent predator

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2009 Senate Prefiled

12/9/2009 Senate Referred to Committee on **Judiciary**

1/12/2010 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2010\01-12-10.docx)‑23

1/12/2010 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2010\01-12-10.docx)‑23

1/12/2010 Senate Referred to Subcommittee: L.Martin (ch), Malloy, Cleary, Coleman, Shoopman

3/3/2010 Senate Committee report: Favorable with amendment **Judiciary** [SJ](file:///h:\SJ%20Archive\2010\03-03-10.docx)‑10

3/4/2010 Senate Committee Amendment Amended and Adopted [SJ](file:///h:\SJ%20Archive\2010\03-04-10.docx)‑19

3/4/2010 Senate Read second time [SJ](file:///h:\SJ%20Archive\2010\03-04-10.docx)‑19

3/9/2010 Senate Read third time and sent to House [SJ](file:///h:\SJ%20Archive\2010\03-09-10.docx)‑19

3/9/2010 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2010\03-09-10.docx)‑65

3/9/2010 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2010\03-09-10.docx)‑65

4/14/2010 House Committee report: Favorable **Judiciary** [HJ](file:///h:\HJ%20Archive\2010\04-14-10.docx)‑77

4/21/2010 House Read second time [HJ](file:///h:\HJ%20Archive\2010\04-21-10.docx)‑49

4/21/2010 House Roll call Yeas‑111 Nays‑0 [HJ](file:///h:\HJ%20Archive\2010\04-21-10.docx)‑49

4/22/2010 House Read third time and enrolled [HJ](file:///h:\HJ%20Archive\2010\04-22-10.docx)‑15

5/6/2010 Ratified R 185

5/12/2010 Signed By Governor

5/21/2010 Effective date See Act for Effective Date

5/25/2010 Act No. 158

**VERSIONS OF THIS BILL**

[12/9/2009](file:///p:\pprever\2009-10\931_20091209.docx)

[3/3/2010](file:///p:\pprever\2009-10\931_20100303.docx)

[3/4/2010](file:///p:\pprever\2009-10\931_20100304.docx)

[4/14/2010](file:///p:\pprever\2009-10\931_20100414.docx)

(A158, R185, S931)

**AN ACT TO AMEND SECTION 44‑48‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EFFECTIVE DATE OF PAROLE OR CONDITIONAL RELEASE OF SEXUALLY VIOLENT PREDATORS, SO AS TO PROVIDE THAT WRITTEN NOTICE OF THE RELEASE OF A SEXUALLY VIOLENT PREDATOR FROM PRISON MUST BE GIVEN TO THE MULTIDISCIPLINARY TEAM AT LEAST TWO HUNDRED SEVENTY DAYS RATHER THAN ONE HUNDRED DAYS BEFORE HIS RELEASE FROM TOTAL CONFINEMENT WITH CERTAIN EXCEPTIONS, OR CERTAIN ANTICIPATED HEARINGS, AND TO PROVIDE THAT THE PAROLE OR CONDITIONAL RELEASE ORDER DOES NOT TAKE EFFECT FOR ONE HUNDRED EIGHTY DAYS, RATHER THAN NINETY DAYS, AFTER ISSUANCE OF THE ORDER; TO AMEND SECTION 44‑48‑80, AS AMENDED, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD AFTER PROBABLE CAUSE IS FOUND TO EXIST THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY PENDING CONCLUSION OF THE PROCEEDINGS IN THIS CHAPTER AND THAT THE COURT MUST DIRECT THE PERSON TO BE TRANSPORTED TO AN APPROPRIATE FACILITY OF THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, AND TO PROVIDE THAT THE EXPERT THAT CONDUCTS THE EVALUATION OF A PERSON TO DETERMINE WHETHER HE IS A SEXUALLY VIOLENT PREDATOR MUST COMPLETE THE EVALUATION WITHIN SIXTY DAYS AFTER THE PROBABLE CAUSE HEARING UNLESS EXTRAORDINARY CIRCUMSTANCES EXIST; TO AMEND SECTION 44‑48‑90, AS AMENDED, RELATING TO THE TIME WITHIN WHICH A JURY TRIAL MUST BE REQUESTED AND HELD TO DETERMINE IF A PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO DELETE THE PROVISION THAT REQUIRES THAT THE TRIAL MUST BE CONDUCTED WITHIN SIXTY DAYS OF THE HEARING HELD PURSUANT TO SECTION 44‑48‑80, TO PROVIDE THAT THE TRIAL MUST BE HELD WITHIN NINETY DAYS OF ISSUANCE OF THE COURT APPOINTED EVALUATOR’S OPINION, AND TO PROVIDE THAT UPON RECEIPT OF THE ISSUANCE OF THE OPINION, EITHER PARTY MAY RETAIN AN EXPERT TO CONDUCT A SUBSEQUENT EVALUATION; TO AMEND SECTION 44‑48‑100, AS AMENDED, RELATING TO THE FACILITY IN WHICH A PERSON MUST BE HELD UPON A MISTRIAL IN DETERMINING WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR, SO AS TO REQUIRE THAT THE PERSON ONLY BE HELD IN A LOCAL OR REGIONAL DETENTION FACILITY; AND TO AMEND SECTION 44‑48‑120, AS AMENDED, RELATING TO PROCEDURES REQUIRED WHEN THE DIRECTOR OF THE DEPARTMENT OF MENTAL HEALTH DETERMINES A PERSON COMMITTED TO THE DEPARTMENT AS A SEXUALLY VIOLENT PREDATOR IS NO LONGER LIKELY TO COMMIT ACTS OF SEXUAL VIOLENCE, SO AS TO REQUIRE THE DIRECTOR TO CERTIFY THIS DETERMINATION IN WRITING AND TO NOTIFY THE ATTORNEY GENERAL OF THIS CERTIFICATION AND OF THE PATIENT’S AUTHORIZATION TO PETITION THE COURT FOR RELEASE, TO PROVIDE THAT THE ATTORNEY GENERAL MAY REQUEST AN EXAMINATION BEFORE A HEARING ON THE RELEASE IS HELD, AND TO PROVIDE THAT EITHER PARTY MAY REQUEST THAT THE HEARING BE HELD BEFORE A JURY, AND TO PROVIDE THAT IF THE ATTORNEY GENERAL’S QUALIFIED EXPERT CONCLUDES THAT THE PETITIONER, IF RELEASED MAY COMMIT ACTS OF SEXUAL VIOLENCE, THE PETITIONER MAY RETAIN A QUALIFIED EXPERT TO PERFORM A SUBSEQUENT EVALUATION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Sexually violent predators**

SECTION 1. Section 44‑48‑40(A) and (B) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“(A) If a person has been convicted of a sexually violent offense, the agency with jurisdiction must give written notice to the multidisciplinary team established in Section 44‑48‑50, the victim, and the Attorney General at least two hundred seventy days before:

(1) the person’s anticipated release from total confinement, except that in the case of a person who is returned to prison for no more than two hundred seventy days as a result of a revocation of any type of community supervision program, written notice must be given as soon as practicable following the person’s readmission to prison;

(2) the anticipated hearing on fitness to stand trial following notice under Section 44‑23‑460 of a person who has been charged with a sexually violent offense but who was found unfit to stand trial for the reasons set forth in Section 44‑23‑410 following a hearing held pursuant to Section 44‑23‑430;

(3) the anticipated hearing pursuant to Section 17‑24‑40(C) of a person who has been found not guilty by reason of insanity of a sexually violent offense; or

(4) release of a person who has been found guilty of a sexually violent offense but mentally ill pursuant to Section 17‑24‑20.

(B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release, the parole or the conditional release must be granted to be effective one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole or conditional release of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.”

**Sexually violent predators**

SECTION 2. Section 44‑48‑80(D) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“(D) If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions only may be granted for extraordinary circumstances.”

**Sexually violent predators**

SECTION 3. Section 44‑48‑90 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑90. (A) The court must conduct a trial to determine whether the person is a sexually violent predator.

(B) Within thirty days after the determination of probable cause by the court pursuant to Section 44‑48‑80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44‑48‑80(D), or, if there is no term of court, the next available date thereafter. If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44‑48‑80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.

(C) Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44‑48‑80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the person in obtaining the expert to perform an examination or participate in the trial on the person’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.”

**Sexually violent predators**

SECTION 4. Section 44‑48‑100(A) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“(A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person’s mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person’s release. Upon a mistrial, the court must direct that the person be held at a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury’s determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.”

**Sexually violent predators**

SECTION 5. Section 44‑48‑120 of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

“Section 44‑48‑120. (A) If the Director of the Department of Mental Health determines that the person’s mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the director must certify such determination in writing with the specific basis thereof, authorize the person to petition the court for release, and notify the Attorney General of the certification and authorization. The petition must be served upon the court and the Attorney General. The Attorney General must notify the victim of the proceeding.

(B) The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests an examination by a qualified expert as to whether the petitioner’s mental abnormality or personality disorder has so changed that the petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the petitioner or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the petitioner examined by qualified experts chosen by the State. If the Attorney General retains a qualified expert who concludes that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence.”

**Time effective**

SECTION 6. SECTION 1 of this act takes effect one hundred eighty days after approval by the Governor. The remaining sections of this act take effect upon approval by the Governor.

Ratified the 6th day of May, 2010.

Approved the 12th day of May, 2010.

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