

# ***SEXUAL PREDATOR COMMITMENT LAWS IN THE UNITED STATES: 1998 UPDATE***

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# CONTENTS

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Executive Summary .....	i
Map of States .....	ii
<b>Section One: Overview</b> .....	1
Figure 1: Civil Commitment of Sexually Violent Predators in Washington State: Decision Steps.....	7
Figure 2: Arizona Sexually Violent Person Act: Case Decisions, August 1997-May 1998.....	8
Figure 3: California Sex Offender Commitment Program (SOCP) All Cases as of August 31, 1998.....	9
Table 1: Number of Sexual Predators Committed (Summer 1998).....	10
Table 2: Annual Estimated Costs of Commitment .....	11
<b>Section Two: State Statutes</b> .....	13
Table 3: Comparison of Key Elements .....	14
Arizona .....	16
California .....	17
Florida .....	18
Illinois .....	19
Iowa .....	20
Kansas .....	21
Minnesota.....	22
New Jersey 1998.....	23
New Jersey 1994.....	24
North Dakota .....	25
South Carolina .....	26
Washington .....	27
Wisconsin.....	29
<b>Appendix: Washington State’s End of Sentence Review Committee</b> .....	31
<b>Resources</b> .....	38

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## EXECUTIVE SUMMARY

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Twelve states have statutes that authorize the confinement and treatment of highly dangerous sex offenders following completion of their criminal sentence: Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, New Jersey, North Dakota, South Carolina, Washington, and Wisconsin. These laws are commonly referred to as "sexual predator" laws. This report describes sexual predator laws and compares several of their key provisions.

As of the summer of 1998, more than 520 sexual predators have been committed in these 12 states.

Sexual predator laws conform in many aspects. Key similarities include the following:

- Commitment follows a criminal sentence.
- The laws target repeat sex offenders.
- Evidence regarding the individual's likelihood of future violence is central to decision-making.

In comparing state statutes, some differences emerge:

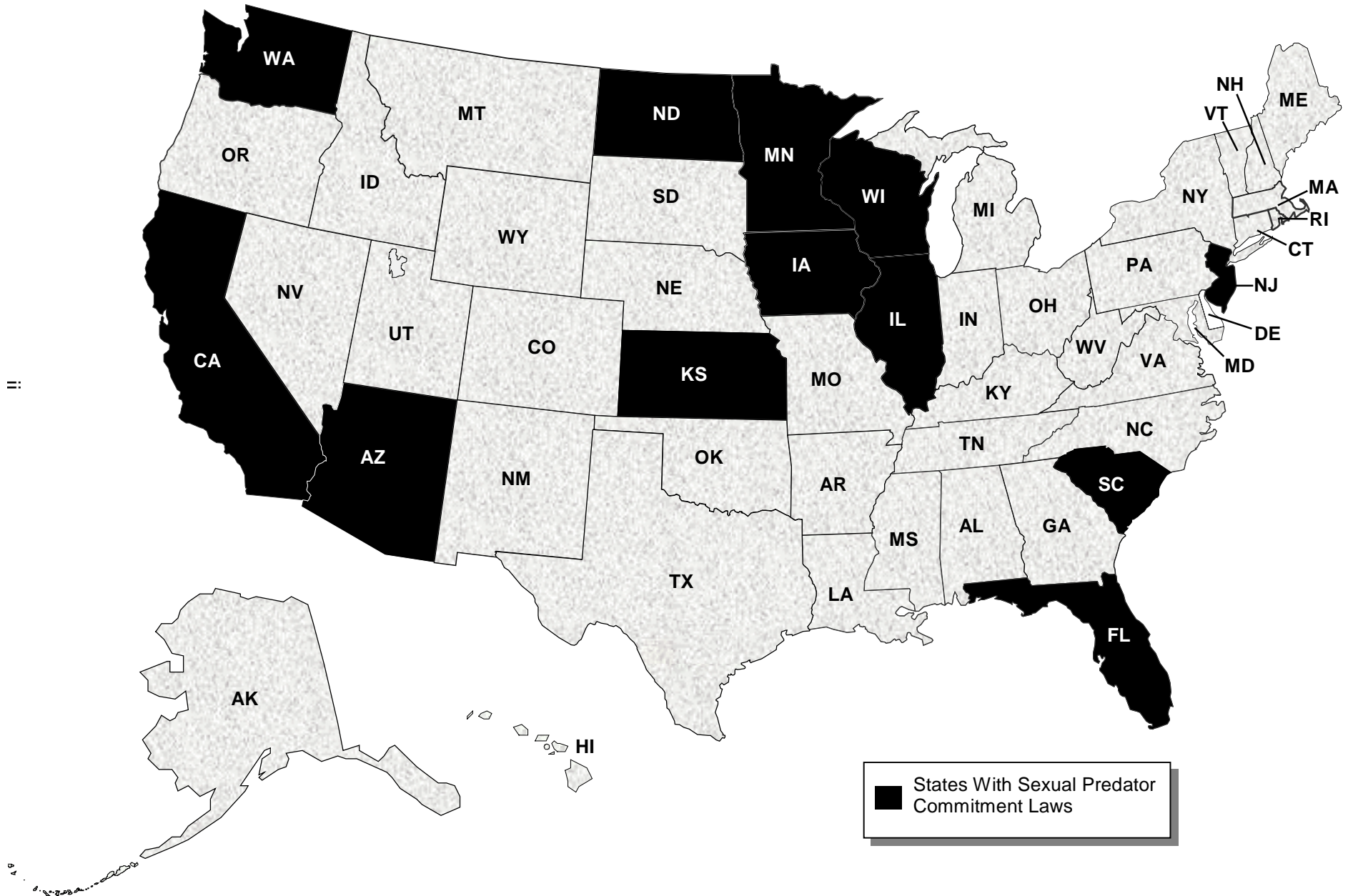
- Most states require the "beyond a reasonable doubt" standard used in criminal proceedings as the burden of proof for commitment; others use the lower standard of "clear and convincing evidence."
- A few states specifically provide that juveniles are eligible for commitment, while others stipulate that petitions can only be filed on persons who are 18 years of age or older.
- California's law calls for a time-limited confinement of two years, while the remaining eleven states authorize indeterminate periods of commitment.

The earliest statutes, in Washington and Kansas, were quite similar, although each law has been slightly modified since its passage. With the U.S. Supreme Court decision in 1997 upholding the constitutionality of Kansas' law, the next wave of statutes is likely to show more individuality.

In 1998, legislative proposals for post-release confinement of sexual predators were introduced in at least 21 states.



# TWELVE STATES HAVE SEXUAL PREDATOR COMMITMENT LAWS







## SECTION ONE: OVERVIEW

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The label "sexual predator" is frequently applied to offenders who target strangers, have multiple victims, or commit especially violent offenses. Twelve states have enacted sexual predator laws that authorize the confinement and treatment of certain sex offenders following completion of their prison sentences. The new wave of sexual predator legislation addresses similar concerns that led to earlier sexual psychopathy laws but are substantially different in their application and legal authority.

The current spate of legislation directed at sexual predators began with passage of the Community Protection Act in Washington State in 1990; the term "sexually violent predator" was created to describe offenders eligible for civil commitment. The legislation focused on a "small but extremely dangerous group" of offenders who lack a mental disease or defect making them appropriate candidates for the state's involuntary treatment act and who are highly likely to reoffend sexually.<sup>1</sup>

Between 1990 and 1996, a handful of states enacted sexual predator statutes similar to Washington's.<sup>2</sup> Kansas' statute was the first to reach the U.S. Supreme Court, where it was ruled constitutional in the summer of 1997.<sup>3</sup> Since then, five additional states have enacted sexual predator laws: Florida, Illinois, Iowa, North Dakota, and South Carolina. In 1998, legislative proposals for post-release confinement of sexual predators were introduced in at least 21 states.<sup>4</sup>

This report describes the sexual predator laws enacted in 12 states<sup>5</sup> and compares several of their key provisions.

### HISTORY OF SEXUAL PSYCHOPATHY LAWS IN THE U.S.

Legislative interest in identifying and containing dangerous sex offenders has a long history in the United States. Starting in the 1930s, serious sex offenders became the focus of special legislation in Michigan, and by 1939 three states had passed laws targeting this group of offenders. Various terms were used to describe the targeted group of sex offenders, including "psychopathic offenders," and most typically, "sexual psychopaths."<sup>6</sup> The underlying assumption of sexual psychopath legislation was that such individuals were "mad, not bad," should receive treatment, and once cured could be safely released.

By the late 1960s, over half the states had special statutes authorizing civil commitment for sexual psychopaths. However, the legislative and public support for these laws diminished over time, and by the 1990s, only 13 states and the District of Columbia retained sexual

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<sup>1</sup> RCW 71.09.010.

<sup>2</sup> Roxanne Lieb, *Washington's Sexually Violent Predator Law: Legislative History and Comparisons With Other States*, Washington State Institute for Public Policy, December 1996).

<sup>3</sup> *Kansas v. Hendricks*, 117 st.ct. 2072 (KS 1997).

<sup>4</sup> Internet search of state legislation conducted by the Institute in June 1998.

<sup>5</sup> Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, New Jersey, North Dakota, South Carolina, Washington, and Wisconsin.

<sup>6</sup> Karl Bowman, "Review of Sex Legislation and the Control of Sex Offenders in the United States of America," *International Review of Criminal Policy* (January 1952): 20-39.

psychopath statutes. Arguments to repeal the statutes were centered on the many horrific offenses committed by program graduates, a desire to have dangerous sex offenders behind bars for significant periods of time, as well as appellate court decisions that certain features of the laws infringed on offenders' civil liberties.<sup>7</sup>

## SEXUAL PREDATOR LAWS IN THE 1990S

Sexual predator statutes enacted in the 1990s differ from the earlier sexual psychopathy laws in several ways. Key distinctions include the following:

- Predator commitment *follows* a criminal sentence; psychopathy commitment served as an alternative to criminal sentencing.
- Predator laws generally *target repeat sex offenders*; psychopathy statutes could be used on individuals convicted of sex offenses for the first time.
- Persons committed to a sexual predator facility *remain until they are judged safe* to be released, either to a less restrictive environment or to the community. Under psychopathy laws, individuals who were judged to be poor candidates for treatment or who did not make adequate progress after they were admitted could be returned to the court for re-sentencing under criminal laws. Under Washington State's psychopathy statute, for example, only about 20 percent of those who entered the program were discharged successfully.<sup>8</sup>

## COMPARING SEXUAL PREDATOR STATUTES

As more states enact sexual predator laws, variations in the definitions and policy choices have emerged. The earliest statutes, in Washington and Kansas, were quite similar, although each law has been slightly modified since its passage. With the U.S. Supreme Court decision upholding the constitutionality of Kansas' law, statutes enacted during the next wave of legislative activity are likely to show more individuality.

In defining the pool of offenders eligible for commitment, states have selected different populations. California requires that individuals eligible for commitment have two or more victims. At least three states specifically provide that juveniles can be considered for commitment (Illinois, Washington, and Wisconsin). In contrast, Arizona and Florida stipulate that petitions can only be filed on persons who are 18 years of age or older.

States differ on the burden of proof that is required for commitment. The majority have adopted the "beyond a reasonable doubt" standard used in criminal proceedings. Florida, Minnesota, New Jersey, and North Dakota authorize the lower standard of "clear and convincing evidence."

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<sup>7</sup> For a full discussion of the history of sexual psychopath legislation, see Michael Tonry, ed., *Crime and Justice*, vol. 23, "Sexual Predators and Social Policy," by Lieb, Quinsey, and Berliner (Chicago: The University of Chicago Press, 1998), 43-114.

<sup>8</sup> *Sex Offender Programs in Western and Eastern State Hospitals*. Washington State Legislative Budget Committee, Report No. 85-16 (1985).

California's law calls for a time-limited confinement of two years, which distinguishes it from other states that have indeterminate periods of commitment. At the end of this two-year period, the state shoulders the burden of proving the need for additional commitment.

New Jersey has two statutes allowing commitment of sex offenders. When the New Jersey Legislature debated options to control serious sex offenders in 1994, Washington's civil commitment statute was under court review for constitutionality, and the U.S. Supreme Court had not heard the Kansas statute. Rather than face constitutional uncertainty, New Jersey lawmakers chose to modify the state's existing civil commitment law and designate a sexually dangerous person as a specific type of person eligible for consideration. The statute provides that persons whose conduct is identified by the sentencing court as evidencing a "pattern of repetitive, compulsive behavior" or who are identified by the Department of Corrections or the Parole Board, are evaluated at the end of their term for potential commitment. Because many sex offenders do not meet the definition of psychotic, the most common diagnosis preceding commitment, the statute specifically does not require this finding in cases involving sexually-dangerous persons.

The issue was revisited in 1998. Two concerns motivated state decision-makers to seek a law like Washington and Kansas' version. First, approximately a third of the population committed under the 1994 law had been discharged. The subsequent court review of these cases did not establish the necessary degree of dangerousness due to mental disorder. Typically, the individuals were pedophiles who were not schizophrenic, not taking psychotropic medication, and not exhibiting overt signs of danger to others. A second concern came from advocates and family members who did not want sex predators in the same facilities with the mentally ill.

In the fall of 1998, a new sexual predator statute was passed, with a delayed effective date of one year. The state will retain its 1994 law, and state officials can choose the most appropriate statute.

Minnesota's experience with a sexual psychopathy law is unique because of the longevity of usage. Enacted in 1939, the "psychopathic personality" statute has been used to commit sex offenders for almost 60 years. The statute authorizes commitment of persons found to be sexually irresponsible and dangerous to others. The proceedings are civil in nature and decided by a commissioner, with release decisions made by an administrative board. This statute was upheld by the Minnesota Supreme Court in 1939 and affirmed by the U.S. Supreme Court in 1940.<sup>9</sup>

For several decades, this law was used infrequently; a total of 221 individuals were committed under this statute in 30 years (1939 through 1969). Then, in the late 1980s, dangerous sex offenders became a topic of public attention, and an Attorney General's task force recommended several changes to state law and practice, including greater use of this statute. The 1989 Minnesota Legislature directed that courts consider the appropriateness of psychopathic commitment at the time of initial sentencing. By 1992, the Department of

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<sup>9</sup> State ex rel. Pearson v. Probate Court, 205 Minn. 545, 287 N.W. 297, 302 (1939), affirmed U.S. 270, 60 Supreme Court 523 (1940).

Corrections was evaluating all high-risk sex offenders for possible commitment prior to their scheduled release.<sup>10</sup>

In recent years, the state's attorneys experienced difficulty proving that certain offenders had an "utter lack of power to control" sexual impulses, a required element of the statute, particularly for offenders confined in prison with few opportunities to reoffend. As a remedy, the 1994 Minnesota Legislature enacted a "sexually dangerous persons" statute that was upheld by the Minnesota Supreme Court in 1996.<sup>11</sup> Because the 1939 statute was found constitutional by the U.S. Supreme Court and the 1994 statute has not been heard by that court, most commitments occur under the 1939 law.

Table 3 (pages 14-15) compares key aspects of the states' statutes.

## **OVERVIEW OF COMMITMENT PROCESS**

Many states have patterned their commitment laws after Washington's and Kansas' statutes. The typical process for civil commitment proceedings can be summarized as follows:

1. A person has been convicted of one or more sexually violent offenses and is scheduled for release from incarceration.
2. The person is assessed to determine whether he or she meets the statutory definition of a sexually violent predator, usually by Department of Corrections or Mental Health staff or an assessment team established for this purpose. This assessment is forwarded to the county prosecutor, state's attorney, or attorney general in the county where the offender was last convicted.
3. The county or state attorney decides whether there is sufficient evidence to file the case.
4. For cases that are filed, the court determines whether probable cause exists to believe that the person is a sexually violent predator. If probable cause exists, the person is taken into custody for an evaluation by a mental health professional.
5. Within 30 to 60 days after the determination of probable cause, a trial is held to determine whether the person is a sexually violent predator. The person has the right to an attorney, jury trial, and examination by an expert of his or her choice.
6. If the court or jury determines that the person is a predator, the person is committed to the state facility for control, care, and treatment until such time that the person's mental abnormality or personality disorder has so changed that he or she is safe to be at large or can be released to a less restrictive alternative.

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<sup>10</sup> For a complete discussion on this history, see Minnesota Legislative Auditor. *Psychopathic Personality Commitment Laws*. St. Paul, Minn., Office of the Legislative Auditor, Program Evaluation Division (1994).

<sup>11</sup> *In re Linehan*, 557 N.W.2d 171, 189 (Minn., 1996).

## STATE VARIATION

In order to identify individuals who meet the statutory criteria, states have established various procedures. This section describes procedures used in approximately half the states with sexual predator laws.

**Washington State.** Washington's process begins with a multi-disciplinary committee that reviews all sex offenders due to be released from prisons, juvenile facilities, and the state mental hospital. This End of Sentence Review Committee is comprised of staff representing the Department of Corrections, the Department of Social and Health Services, the Indeterminate Sentence Review Board, and two law enforcement officials (representing city and county jurisdictions).

After reviewing court and corrections' records, the committee assesses the individual's future dangerousness. For those found to meet the statutory criteria, the committee forwards a recommendation to the prosecuting attorney. Copies of the individual's files are organized and sent to the attorney responsible for the filing decision. The law allows filing by either the attorney general or the county prosecutor. The great majority of prosecutors have turned over this decision-making to the attorney general's office.<sup>12</sup> A staff of attorneys and investigators review the files, applying the filing standards adopted by the state prosecutors. (See Figure 1 on page 7 for flow chart; the state's policies are included in the Appendix.)<sup>13</sup>

**Wisconsin.** Wisconsin's review process starts in the Department of Corrections with a file review of offenders whose conviction history matches the statutory requirements. Cases are forwarded to the End of Confinement Review Board within the Department of Corrections. This multi-disciplinary committee functions like the Washington State committee, with a review of the offender's history and the documentation in the files. At this stage, many first-time offenders and incest offenders are screened out.

Next, the case is referred to a departmental psychologist for evaluation. This review includes examination of file materials and, if the offender consents, an interview. A team of psychologists is being hired to specialize in these evaluations. Based on the evaluation, the department determines whether to recommend that the case go forward and makes this recommendation to the District Attorney or the Department of Justice (Attorney General). The government attorney then petitions for a probable cause hearing.

Following the hearing, cases meeting the probable cause standard are referred to the Mendota Mental Health Institute for an evaluation. The person is transferred to this facility. Staff psychologists examine the case materials and offer an interview and penile plethysmograph test to the individual. Over half the individuals consent to the interview, with about 8 percent agreeing to the plethysmograph.

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<sup>12</sup> Of the 39 counties, the attorney general represents 36.

<sup>13</sup> A study in Washington State examined the initial group of almost 200 individuals referred for commitment, analyzed their characteristics, and tracked their recidivism rates after release. See Donna Schram and Cheryl Darling Milloy, *Sexually Violent Predators and Civil Commitment: A Study of the Characteristics and Recidivism of Sex Offenders Considered for Civil Commitment But for Whom Proceedings Were Declined*, (Olympia, WA: Washington State Institute for Public Policy, 1998)

The staff does not work for the District Attorney or Department of Justice in this evaluation, instead they work for the court. Thus, their reports are filed with the judge and both attorneys in the case. Their recommendation addresses whether the case should be filed, dismissed, or in some cases, whether they are equivocal.

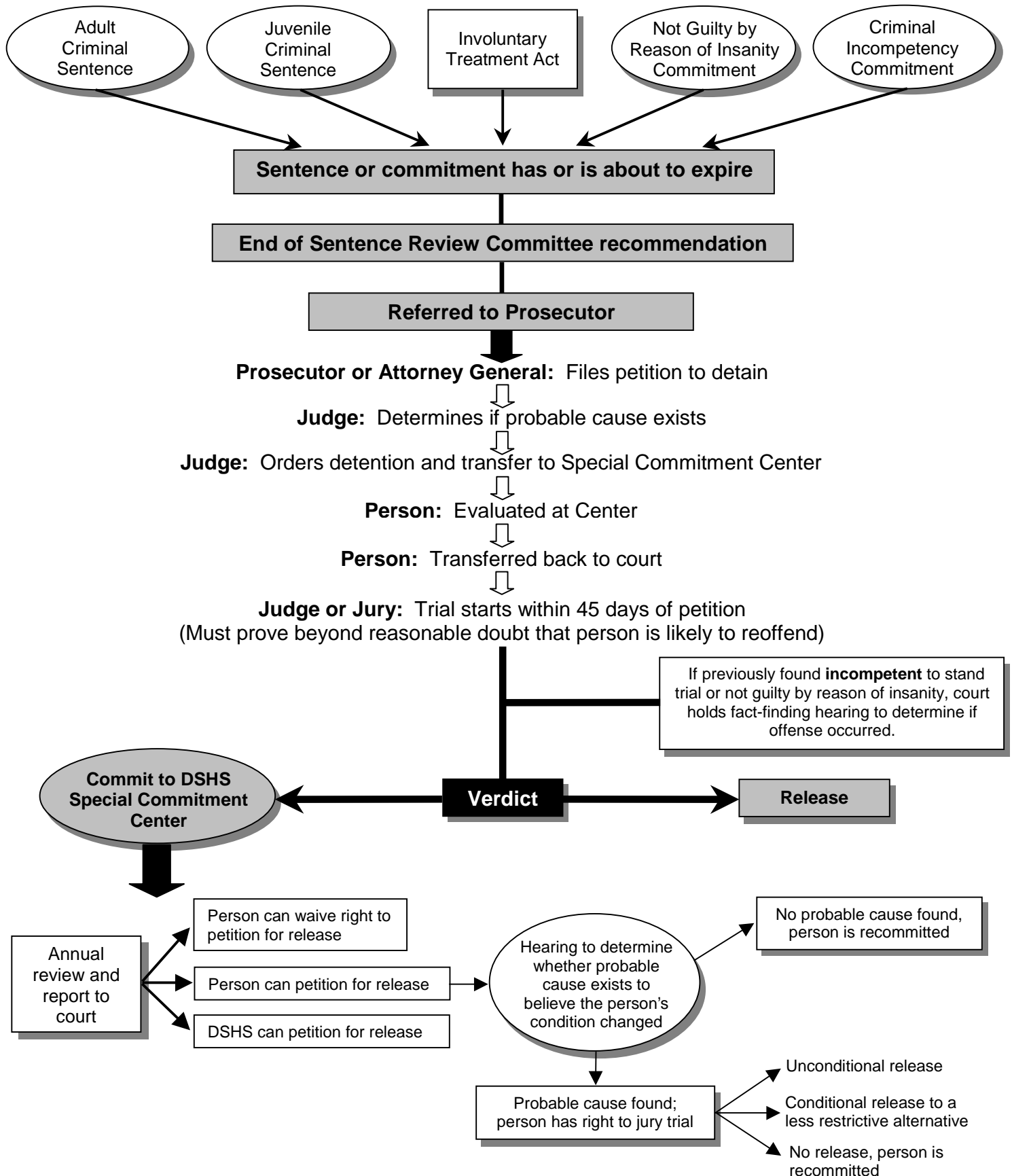
Dennis Doren, Ph.D., the Evaluation and Development Director of the Mendota Mental Health Facility, reports the following case flow statistics: Of the statutorily eligible sex offenders scheduled for release from prison, about 25 percent are referred for a psychological evaluation. Of that number, about 60 percent are screened out and not referred for commitment. Thus, approximately 12 percent of the "potentially eligible" cases are referred to prosecutors for decision-making.

**Kansas.** The statute provides for a multi-disciplinary team to evaluate offender records and make petition requests; prosecutors are not part of this team. The team refers cases for consideration to the Attorney General. A group of four elected prosecutors, chosen by their member organization, examines this pool of cases to determine which to file. Approximately 1,500 prisoners scheduled for release have been identified as meeting the 1994 law's statutory criteria; petitions were filed for approximately 10 percent of this group.

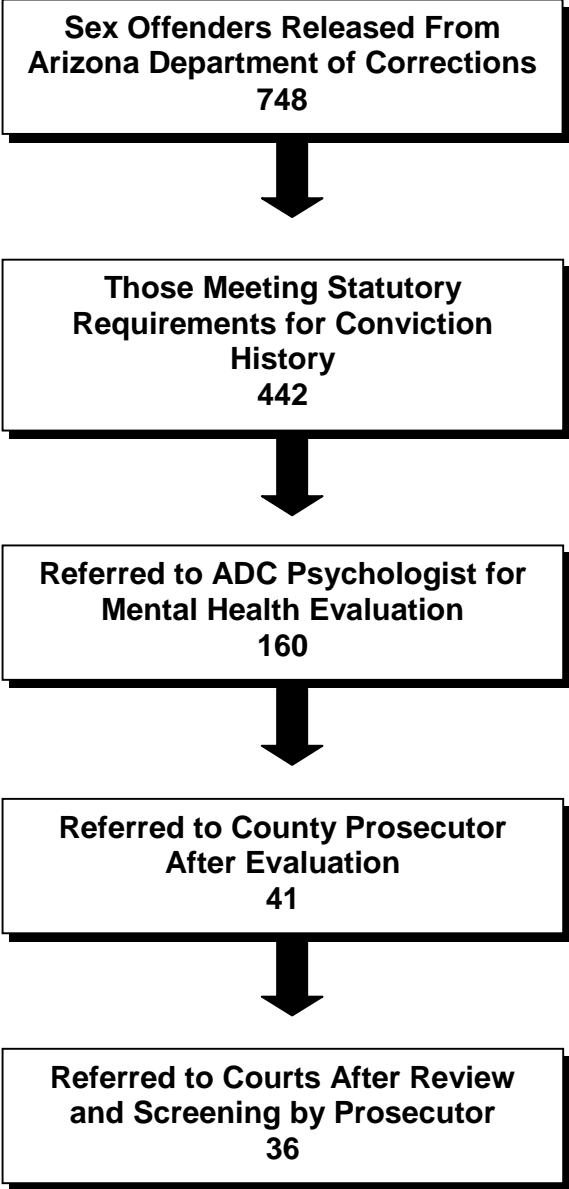
**Arizona.** In Arizona, the Department of Corrections reviews inmates scheduled for release against the statutory requirements. Those found to meet the criteria are referred to departmental psychologists for a mental health evaluation. The department then refers cases to the county attorneys for screening and possible filing. The flow of cases through these sets is depicted in Figure 2 (page 8).

**California.** California's procedures are similar to Arizona's. Figure 3 outlines their case flow patterns to date (see page 9).

**FIGURE 1: CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS IN WASHINGTON STATE: DECISION STEPS**



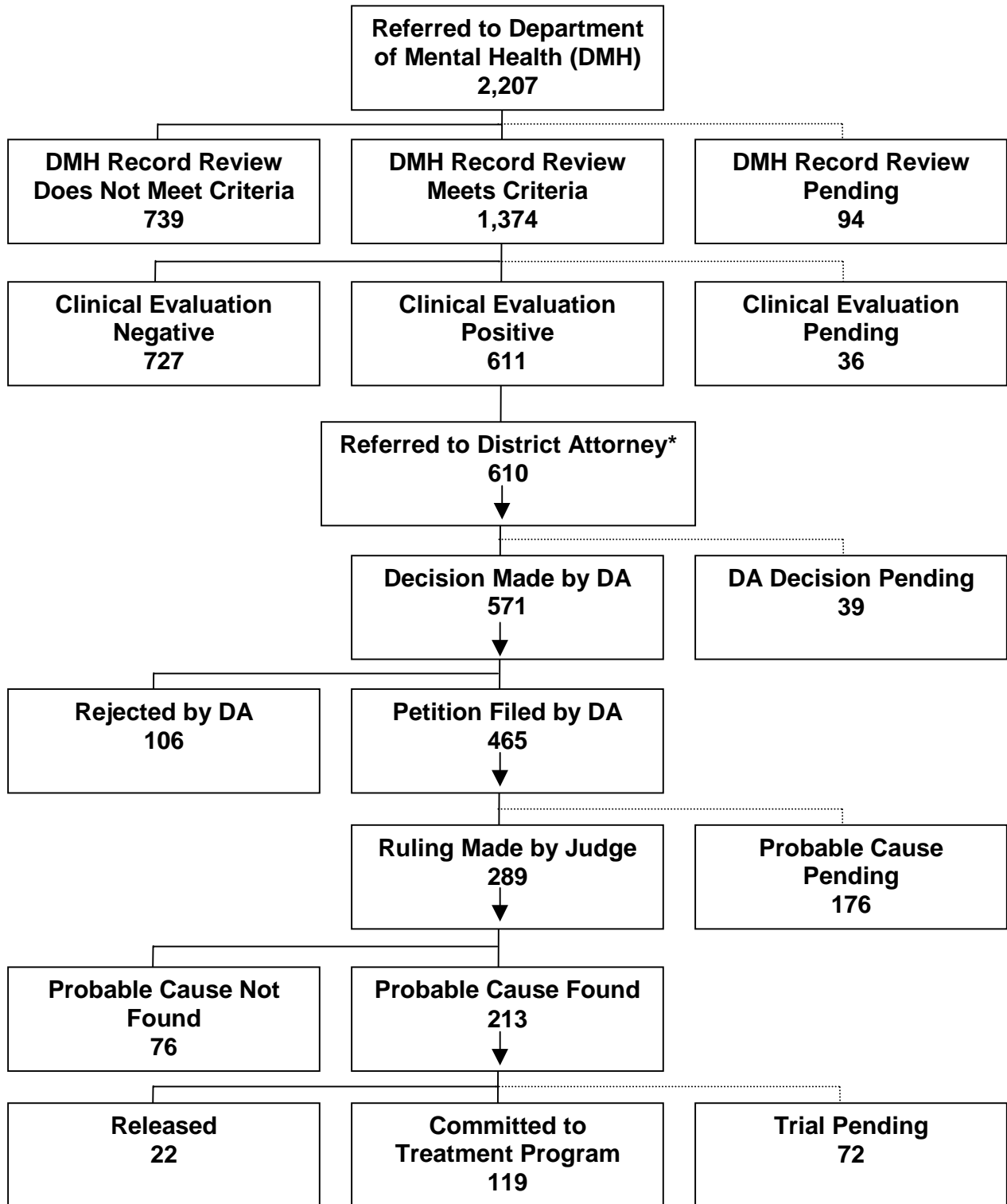
**FIGURE 2: ARIZONA SEXUALLY VIOLENT PERSON ACT:  
CASE DECISIONS, AUGUST 1997 – MAY 1998**



Source: Arizona Department of Health Services.



**FIGURE 3: CALIFORNIA SEX OFFENDER COMMITMENT PROGRAM (SOCP)  
ALL CASES AS OF AUGUST 31, 1998**



Source: California's Department of Mental Health.

\*One case with a positive clinical evaluation was not referred to the District Attorney.

## REFERRALS, FILINGS, AND COMMITMENTS

During the summer of 1998, we contacted states and inquired about the number of commitments as well as cases evaluated for commitment. The responses are displayed in Table 1. Since states rely on a variety of procedures to identify sexual predators, some explanation of terms is required.

- Referred cases are those that have been reviewed and a judgment made by an individual or committee; the person meets the statutory criteria, including an assessment of mental state or dangerousness as well as history.
- Filed cases are those a prosecutor acted on through a petition.
- Committed represents the number found by the court/jury to meet the statutory criteria. In some states, individuals have chosen to undergo an evaluation at the facility and did not immediately contest the filing; these persons are not included in this category.

Since most states enacted their statutes in the last three years, the overall commitment pattern is still unstable.

**TABLE 1: NUMBER OF SEXUAL PREDATORS COMMITTED (SUMMER 1998)**

<b>STATE</b>	<b>YEAR ENACTED</b>	<b>NUMBER REFERRED</b>	<b>NUMBER FILED</b>	<b>NUMBER COMMITTED</b>
Arizona	1996	41	36	5
California	1996	1,374	465	119
Florida	1998	0	0	0
Illinois	1997	27	n/a*	3
Iowa	1998	0	0	0
Kansas	1994	n/a*	150	17
Minnesota	1939	220	n/a*	130
New Jersey	1994	n/a*	n/a*	101
North Dakota	1997	1	0	0
South Carolina	1998	0	0	0
Washington	1990	196	71	41
Wisconsin	1994	n/a*	260	107
<b>Total</b>				<b>523</b>

*\*Not applicable or not available.*

## COSTS

Table 2 presents cost estimates for sexual predator laws.<sup>14</sup> These estimates cover housing and treatment costs and where indicated, legal expenses. These estimates are not comprehensive. The process of identifying and evaluating potential candidates for commitment often requires assistance from state and local government staff; few, if any, of the estimates incorporate these resources.

**TABLE 2: ANNUAL ESTIMATED COSTS OF COMMITMENT**

<b>STATE</b>	<b>HOUSING</b>	<b>TREATMENT</b>	<b>LEGAL</b>
<b>Arizona</b>	Unknown	\$45,000 per offender	Unknown
<b>California</b>	\$103,000 per offender, combined		Unknown
<b>Florida</b>	\$97,000 per offender, combined		Unknown
<b>Illinois</b>	Unknown	Unknown	Unknown
<b>Iowa</b>	\$1,177,481 total in 1st year of operation, \$2,783,855 in 2nd year (Based on 6 to 11 commitments per year)		\$269,000 total in 1st year, \$425,000 in 2nd year (Based on estimated 6 to 11 commitments per year)
<b>Kansas</b>	\$80,000 per offender, combined		Unknown
<b>Minnesota</b>	\$110,000 per offender, combined		Unknown
<b>New Jersey 1994</b>	\$85,000 per offender, combined		Unknown
<b>New Jersey 1998</b>	\$20 million was appropriated to construct and operate a new 150-bed facility (expansion to 300 possible)		Unknown
<b>North Dakota</b>	\$100,000 per offender, combined		Unknown
<b>South Carolina</b>	Unknown	\$940,000 total (24-bed facility)	Unknown
<b>Washington</b>	\$70,000 per offender, combined		\$60,000 per offender
<b>Wisconsin</b>	\$82,125 per offender, combined		Unknown

## RELEASE FROM COMMITMENT FACILITIES

Given the recency of most state statutes, few people have been released from the facilities. In Washington State's eight-year history with its law, two individuals have been released to a less restrictive alternative.

<sup>14</sup> Figures based upon telephone conversations with facility directors between April and July 1998. Some figures were not available because decision-making occurs at the local level, and a central data source is not available.

In 1994, Minnesota implemented a new sex offender treatment program for individuals committed with sexual psychopathic personalities or as sexually dangerous persons. As of July 1998, one offender completed this program and is about to be released.

Wisconsin's statute was passed in 1994. Two individuals have been discharged from Wisconsin's facility and seven are on supervised release.

## **CONCLUSION**

Over 520 persons have been identified across the country as sexual predators. Twelve states have enacted sexual predator laws, and many more are considering similar legislation.

As these laws evolve, states will take individual approaches in deciding how to assess the relative dangerousness of sex offenders. Additionally, the treatment programs will vary in their approach, intensity, and degree of offender cooperation. As more individuals labeled as predators are released from confinement, decisions will follow about their level of supervision and conditions.

Whatever opinion one holds about sexual predator laws, the implementation experience of states offers a rich source of information on sexual offender policy. A systematic analysis of these state experiences could benefit policymakers across the country.

## **SECTION TWO: STATE STATUTES**

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Table 3 (next page) compares aspects of the states' statutes. Summaries of individual state laws follow for Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, New Jersey, North Dakota, South Carolina, Washington, and Wisconsin.



**TABLE 3  
COMPARISON OF KEY ELEMENTS**

<b>State</b>	<b>Eligible Offenders/Offenses Likelihood Standards</b>	<b>Responsible Agency</b>	<b>Setting</b>	<b>Standard of Proof</b>	<b>Jury Trial</b>	<b>Duration of Confinement</b>	<b>Release Authority</b>
<b>Arizona</b>	Individuals at least 18 years old. <i>Standard:</i> likely to engage in sexual violence.	Health Services	Hospital	Beyond a reasonable doubt	Yes	Indeterminate	Court
<b>California</b>	Individuals at least 18 years old with two or more victims. <i>Standard:</i> the person is a danger to the health and safety of others in that he or she will engage in sexually violent criminal behavior.	Mental Health	Hospital	Beyond a reasonable doubt	Yes; unanimous	2 years; can be extended by court with additional petition and trial	Court
<b>Florida</b>	Individuals at least 18 years old. <i>Standard:</i> likely to engage in acts of sexual violence.	Children and Family Services	Hospital	Clear and convincing evidence	Yes; unanimous	Indeterminate	Court
<b>Illinois</b>	Can include juveniles. <i>Standard:</i> substantially probable that the person will engage in acts of sexual violence.	Human Services	Secure facility	Beyond a reasonable doubt	Yes	Indeterminate	Court
<b>Iowa</b>	<i>Standard:</i> likely to engage in predatory acts constituting sexually violent offenses.	Human Services	Forensic Mental Health Unit within Corrections	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Kansas</b>	<i>Standard:</i> likely to engage in predatory acts of sexual violence.	Social and Rehabilitative Services	Correctional Mental Health facility	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Minnesota</b>	<i>Standard:</i> likely to engage in acts of harmful sexual conduct.	Human Services	Hospital	Clear and convincing evidence	No	Indeterminate	Commissioner
<b>New Jersey 1994</b>	Relies on mental health commitment law, with specific direction that mental illness is not limited to those with psychosis. <i>Standard:</i> likely to engage in acts of sexual violence.	Mental Health	Hospital	Clear and convincing evidence	No	Indeterminate	Court

**TABLE 3 (CONTINUED)**

<b>State</b>	<b>Eligible Offenders/Offenses: Key Distinctions</b>	<b>Responsible Agency</b>	<b>Setting</b>	<b>Standard of Proof</b>	<b>Jury Trial</b>	<b>Duration of Confinement</b>	<b>Release Authority</b>
<b>New Jersey 1998</b>	Individuals at least 18 years old. <i>Standard:</i> has a mental disorder that makes the person likely to engage in sexual violence.	Human Services	Secure facility operated by the Department of Corrections and separate offenders	Clear and convincing evidence	No	Indeterminate	Parole Board
<b>North Dakota</b>	<i>Standard:</i> likely to engage in further acts of sexually predatory conduct.	Human Services	Hospital	Clear and convincing evidence	No	Indeterminate	Court
<b>South Carolina</b>	<i>Standard:</i> likely to engage in acts of sexual violence.	Mental Health	Secure facility	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Washington</b>	Individuals must meet definition of "predatory." Predatory defined as "acts directed toward strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization." For individuals living in the community, a recent overt act is required. <i>Standard:</i> likely to engage in predatory acts of sexual violence.	Social and Health Services	Mental Health facility within the Department of Corrections	Beyond a reasonable doubt	Yes; unanimous	Indeterminate	Court
<b>Wisconsin</b>	Can include juveniles. <i>Standard:</i> substantially probable that the person will engage in acts of sexual violence.	Social Services	Hospital	Beyond a reasonable doubt	Yes	Indeterminate	Court

15



# Arizona

<b>Year, Statute</b>	1996 Arizona Revised Statutes 13
<b>Definitions</b>	<p><i>Sexually violent person:</i> a person, at least 18 years old, convicted of a sexually violent offense, found guilty but insane of such an offense, or charged with a sexually violent offense and determined incompetent to stand trial and who has a mental disorder that makes the person likely to engage in sexual violence.</p> <p><i>Sexually violent offense:</i> sexual conduct with a minor; sexual assault; sexual assault of a spouse; molestation of a child; continuous sexual abuse of a child; sexual motivation findings beyond a reasonable doubt connected with murder; assault or aggravated assault; unlawful imprisonment; attempt, solicitation, facilitation, or conspiracy to commit one of the above offenses; and any act committed in another jurisdiction that if committed in Arizona would be a sexually violent offense.</p>
<b>Commitment Procedures</b>	<p>County attorney or attorney general may file petition if the person is going to be released from confinement or custody (those found guilty except insane or incompetent to stand trial).</p> <p>A petition is filed and a probable cause hearing held. If probable cause, the person is taken into custody and transferred to an appropriate facility for an evaluation.</p> <p>Within 45 days of the petition, the court shall conduct a trial. The person has right to counsel and can retain expert of choice.</p> <p>The court or jury shall determine beyond a reasonable doubt if the person is a predator.</p> <p>If found to be a predator, the person is committed to the custody of the state Department of Health Services for placement in a licensed facility under the supervision of the Arizona State Hospital; or if statutory conditions are met, the person is ordered released to a less restrictive alternative. The person shall remain in facility until paraphilia has so changed that the person would not be a threat to public safety.</p> <p>If the court determines that conditional release to a less restrictive alternative is in the best interest of the person and the community can be adequately protected, and minimum statutory conditions are met, the court shall order such release.</p>
<b>Location, Number Committed</b>	<p>Individuals are housed at the Arizona Community Protection and Treatment Center, located on the campus of the state hospital. As of July 1998, 41 individuals have been referred, of those: 5 have been committed, and 24 are awaiting trial.</p>
<b>Treatment and Release Provisions</b>	<p>The person shall be examined annually, with a report to the court. The annual report shall state if conditional release to a less restrictive alternative is in the best interest of the person and the community can be adequately protected. The person may retain or, if indigent, have the court appoint, a qualified expert.</p> <p>The department director or superintendent can petition the court for release to a less restrictive alternative or for unconditional discharge, with the determination that the person's paraphilia has so changed that the person is not likely to engage in predatory acts of sexual violence. The person can petition the court without the superintendent's approval. The hospital shall give person annual written notice of the person's right to petition. If the person does not waive the petition right, the court shall set a show cause hearing. The person has right to an attorney, but not to be present. If the court finds probable cause for release, a release hearing is set.</p> <p>The person may be present at release hearing and receive same constitutional protections as applied to initial commitment. County attorney or attorney general may request a jury. Person is examined by expert chosen by the state, and can also retain expert of choice.</p> <p>A jury trial can be requested by state or petitioner. State must prove beyond a reasonable doubt that the person's paraphilia has not changed, the person remains a danger to others, and is likely to engage in predatory acts if released, conditionally or unconditionally.</p> <p>The court's jurisdiction over the person continues until the person is unconditionally discharged.</p> <p>Before the court orders a conditional discharge, conditions can be imposed for treatment, supervision, and housing determined to be necessary to ensure community safety. Following a hearing, the court determines if the conditions for conditional release have been met. The issue can be submitted to a jury. Conditional release cases are reviewed at least annually by the court. If the person does not comply with conditions, the court can revoke the conditional release and commit the person to total confinement.</p>
<b>Estimated Costs</b>	<p>\$45,000 annually per offender on treatment.</p>
<b>Key Court Decisions</b>	<p>The Arizona Supreme Court returned a challenge to the statute because they declined jurisdiction (<i>Martin et al vs. Hon. Reinstein et al</i> (CV-98-0060-SA)).</p>
<b>Contact Person</b>	<p>Gene Messer, Arizona State Hospital, (602) 220-6005</p>

# California

<b>Year, Statute</b>	1996 Welfare and Justice Code, sec. 6600
<b>Definitions</b>	<p><i>Sexually violent predator</i>: a sex offender, at least 18 years old, convicted of specified sex offenses (committed by force, violence, duress, menace or fear of injury of a victim or another person) against two or more victims, and the person is determined to have a diagnosed mental disorder that makes it likely that the person will engage in sexually violent criminal behavior upon release from the California Department of Corrections. Person under the jurisdiction of the Department of Corrections, and is either serving a determinate prison sentence or has had parole revoked.</p> <p><i>Sexually violent offense</i>: rape, spousal rape, aiding or abetting rape, lewd and lascivious act with a child under the age of 14, and sodomy. If the victim of the underlying offense is a child under 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a sexually violent offense.</p>
<b>Commitment Procedures</b>	<p>Department of Corrections and Board of Prison Terms shall review each inmate 6 months prior to release. With probable cause, the person can be held for 45 days after prison release date at Atascadero State Hospital.</p> <p>The Department of Mental Health evaluates the referrals to determine if there is a diagnosed mental disorder which makes it likely that the person will engage in sexually violent criminal behavior upon release. Two department clinicians make this diagnosis.</p> <p>If the department clinicians do not agree, the person is examined by two independent professionals. If they do not concur, the person is released to parole at end of term or unconditionally discharged at end of statutory parole period.</p> <p>If both clinicians concur, the case is referred to the district attorney or county counsel for possible filing. The county superior court hears the matter, and a probable cause hearing is held within 10 days. The person has the right to counsel at the hearing. If probable cause is found, the person is held in a secure facility until the trial. The person can request a jury trial for the commitment hearing, and the jury must unanimously decide, beyond a reasonable doubt, that the person is a predator. Jurors are admonished that they may not find the person a predator, absent relevant evidence of a currently diagnosed mental disorder. The person is committed to the Department of Mental Health for 2 years for treatment in a secure facility.</p>
<b>Location, Number Committed</b>	<p>Committed individuals are housed at the Atascadero State Hospital.</p> <p>As of July 1998, 1,374 individuals were found by the Department of Mental Health to meet commitment criteria and referred to county district attorneys. 119 individuals have been committed under the law.</p>
<b>Treatment and Release Provisions</b>	<p>Person is committed to the Department of Mental Health for 2 years. A person cannot be held for more than 2 years unless the court subsequently extends commitment by granting a new petition. Due process protections from initial commitment hearing apply, potentially including a jury trial.</p> <p>Each person's mental condition is examined yearly. The person may retain an expert of choice.</p> <p>With a change in mental disorder and likelihood to engage in sexual violence, the director can petition for an unconditional or conditional release hearing. The person is annually notified of right to petition court for conditional release and subsequent unconditional discharge.</p> <p>Persons can petition for a conditional release and subsequent unconditional discharge. If time remains on the parole period, the person is supervised for remainder of statutory parole period.</p>
<b>Estimated Costs</b>	\$103,000 annually per offender for treatment and confinement.
<b>Key Court Decisions</b>	<p>Three cases pending before the California Supreme Court:  <i>Hubbart v. Supreme Court</i>, 50 Cal App. 4<sup>th</sup> 1155 (Santa Clara County)  <i>People v. Superior Court (Cain)</i>, 49 Cal App. 4<sup>th</sup> 1164 (San Francisco County)  <i>Garcett v. Superior Court (Rasmussen, et al)</i>, 1996 Cal App Lexis 962</p>
<b>Contact Person</b>	George Bukowski, Department of Mental Health, (916) 654-2511

# Florida

<b>Year, Bill</b>	1998 HB 3327, the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act." Effective January 1, 1999.
<b>Definitions</b>	<p><i>Sexually violent predator</i>: a person, at least 18 years old, who has been convicted of a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.</p> <p><i>Sexually violent offense</i>: murder while engaged in sexual battery; sexual battery; lewd, lascivious or indecent assault or act upon or in the presence of a child. One of the following offenses if the actor also commits sexual battery or a lewd, lascivious or indecent assault or act upon or in the presence of a child: kidnapping, or false imprisonment of child under 16; any attempt, criminal solicitation or conspiracy of a sexually violent offense; federal conviction or conviction in another state for what would be a sexually violent offense in Florida; or any criminal act that either at the time of sentencing or subsequently during civil commitment proceedings has been determined beyond a reasonable doubt to have been sexually motivated.</p>
<b>Commitment Procedures</b>	<p>The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall give written notice to the multidisciplinary team (consisting of two licensed psychiatrists or psychologists appointed by the Secretary of Children and Family Services), and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense 180 days (90 days for committed juveniles) prior to the offender's anticipated release from confinement.</p> <p>The multidisciplinary team, within 45 days of receiving notice, shall assess whether the person meets the definition of a sexually violent predator and provide the state attorney with its written assessment and recommendation.</p> <p>Following receipt of the written assessment and recommendation, the state attorney may file a petition with the circuit court seeking to have a person declared a sexually violent predator. The judge shall determine whether probable cause exists to believe that the person is a sexually violent predator. If probable cause is found, the judge shall direct that the person be taken into custody and held in a secure facility for an evaluation by a mental health professional.</p> <p>Within 30 days after the determination of probable cause, the court shall conduct a trial to determine whether the person is a sexually violent predator. The person is entitled to the assistance of counsel, and to be examined by an expert or mental health professional of choice. The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator (jury must be unanimous). Once the determination is made, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, sexually violent predators committed to the Department of Children and Family Services shall be kept in a secure facility segregated from other patients.</p>
<b>Location, Number Committed</b>	Possible location is a state mental health hospital operated by the Department of Children and Family Services. No referrals to date.
<b>Treatment and Release Provisions</b>	<p>The Department of Children and Family Services shall provide written notice of a committed person's right to petition the court for release. Each person committed shall be examined once every year regarding his or her mental condition. The report is delivered to the court, and the court conducts an annual review of the person's status.</p> <p>If the court determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, then the court shall set a hearing. The person has the right to be examined by expert of choice, paid by state if necessary.</p> <p>The state has the burden of proof at the hearing to prove that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released, is likely to engage in act of sexual violence.</p> <p>Person can file petition for discharge. If the person files a petition without departmental approval and the court found a previous petition without merit, or after a hearing, not to meet the release criteria, the court can deny the petition without a hearing if determined to be a frivolous petition.</p>
<b>Estimated Costs</b>	The Department of Children and Family Services estimates spending \$97,000 annually per offender on housing and treatment.
<b>Key Court Decisions</b>	No legal challenges to date.
<b>Contact Person</b>	Brent Taylor, Department of Children and Family Services (850) 487-2920

## Illinois

<b>Year, Bill</b>	1997, Sexually Violent Person Act, Senate Bill 6, Public Act 90-40, effective January 1, 1998.
<b>Definitions</b>	<p><i>Sexually violent person:</i> a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for such an offense, or has been found guilty of or not responsible for such an offense by reason of insanity, mental defect, or disease, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.</p> <p><i>Sexually violent offense:</i> criminal sexual assault, aggravated sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, sexually motivated first degree murder, and solicitation, conspiracy, or attempt to commit any of the above crimes.</p>
<b>Commitment Procedures</b>	<p>Within 90 days of release, the agency with the authority or duty to release or discharge a person who may meet the criteria for commitment as a sexually violent person alerts the attorney general or state's attorney. The attorney general or state's attorney may file a petition with the circuit court, alleging that the offender is a sexually violent person based on essential facts to establish probable cause.</p> <p>If the court determines after a hearing that there is probable cause, the court shall order that the person be taken into custody for an evaluation as to whether the person is a sexually violent person. The Department of Human Services shall promulgate rules that provide the qualifications for persons conducting evaluations.</p> <p>A trial to determine whether the person who is the subject of a petition is a sexually violent person shall commence no later than 45 days after the date of the probable cause hearing. At the trial, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt. Alleged offender has the right to be present, to be represented by counsel, and to present and cross-examine witnesses. If the court determines that the offender is a sexually violent person, the court shall order the person to be committed to the Department of Human Services for control, care, and treatment until such time as the person is no longer a sexually violent predator. The Department of Human Services shall arrange for control, care, and treatment in the least restrictive manner consistent with person's requirements and court's order.</p>
<b>Location, Number Committed</b>	The Department of Human Services shall place a committed person in a secure facility provided by the Department of Corrections. As of July 1, 1998, 27 individuals have been referred for commitment and reside in a secure facility pending evaluation and trial, and 3 individuals have been civilly committed and ordered to secure confinement for treatment.
<b>Treatment and Release Provisions</b>	<p>The Department of Human Services shall conduct an examination of a committed sexually violent person's mental conditions within six months after initial commitment and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to conditional release, or discharge.</p> <p>Any committed person may petition the committing court for conditional release if at least six months have elapsed since the initial commitment order was entered or the most recent petition was denied or revoked. Within 20 days after receipt of petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court. The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person.</p>
<b>Estimated Costs</b>	None available
<b>Key Court Decisions</b>	No significant court decisions to date.
<b>Contact Person</b>	Mary Bass, Administrator, Department of Human Services, Sexually Violent Persons Treatment and Detention (217) 782-6470

## Iowa

<b>Year, Bill</b>	1998 HF 2398, effective July 1, 1998.
<b>Definitions</b>	<p><i>Sexually violent predator</i>: a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.</p> <p><i>Sexually violent offense</i>: sexual abuse; assault with intent to commit sexual abuse; lascivious acts with a child; indecent exposure; indecent contact with a child; sexual misconduct; pandering involving a minor; any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, kidnapping, burglary, or child endangerment; a criminal offense committed in another jurisdiction which would constitute a sexually violent offense if committed in Iowa.</p>
<b>Commitment Procedures</b>	<p>When it appears that a person may meet the definition of a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general and the multidisciplinary team (to be established by the Director of the Department of Corrections) no later than 90 days prior to release.</p> <p>The multidisciplinary team, within 30 days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment. The attorney general shall appoint a prosecutor's review committee to review the records of each person referred. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator.</p> <p>The attorney general (or the prosecuting attorney of the county in which the person was convicted or charged) may file a petition within 75 days of initial notice, alleging the person is a sexually violent predator. Upon filing of a petition, the court shall make a preliminary determination as to whether probable cause exists to believe that the person is a sexually violent predator. If preliminary probable cause exists, the person is taken into custody. Within 72 hours, a hearing shall be held to determine whether probable cause exists. At the hearing, the person has right to be present and to an attorney. If the court determines that probable cause does exist, the person shall be transferred to a secure facility for an evaluation as to whether the person is a sexually violent predator. The person may retain experts or professionals to perform an independent examination on the person's behalf.</p> <p>Within 60 days after the probable cause hearing, the court shall conduct a trial to determine whether the person is a sexually violent predator. The person, attorney general, or judge has the right to demand a jury trial. The court or jury determines on a unanimous basis whether, beyond a reasonable doubt, the person is a sexually violent predator.</p> <p>The person is transferred to the Department of Human Services for control, care, and treatment in a secure facility until the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.</p>
<b>Location, Number Committed</b>	Location as yet undetermined. A forensic mental health unit on the grounds of Department of Corrections facility may be established. No referrals to date.
<b>Treatment and Release Provisions</b>	<p>At all times, sexually violent predators shall be kept in a secure facility and those patients shall be segregated from any other patient under the supervision of the Department of Human Services. Each person committed shall be examined once every year regarding his or her mental condition. The report is delivered to the court, and the court conducts an annual review of the person's status.</p> <p>If the court determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, then the court shall set a final hearing. The person has the right to be examined by an expert of choice, paid by the state if necessary.</p> <p>The state has the burden of proof at the hearing to prove that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released, is likely to engage in acts of sexual violence.</p> <p>Person can file petitions for discharge. If the person files a petition without departmental approval and the court found a previous petition frivolous, or after a hearing, not to meet the release criteria, the court can deny the petition without a hearing if determined to be a frivolous petition.</p>
<b>Estimated Costs</b>	Estimated legal costs: 1 <sup>st</sup> year = \$269,000, 2 <sup>nd</sup> year = \$425,000. Estimated housing and review costs: 1 <sup>st</sup> year = \$1,177,481, 2 <sup>nd</sup> year = \$2,783,855. Estimates based on predictions of 6 to 11 commitments per year.
<b>Key Court Decisions</b>	No significant decisions to date.
<b>Contact Person</b>	Harold Templeman, Director of Institutions, Division of Mental Health and Developmental Disabilities, Department of Human Services, (515) 281-5452

# Kansas

<b>Year, Statute</b>	1994, Kansas Statutes Annotated 59-29(a); SB 671, 77th Legislature, 1998
<b>Definitions</b>	<p><i>Sexually violent predator</i>: any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.</p> <p><i>Sexually violent offense</i>: rape; indecent liberties with a child; criminal sodomy; indecent solicitation with a child; sexual exploitation of a child; aggravated sexual battery; any conviction for a felony at any time prior to the law's effective date that is comparable to this definition; any federal or other state conviction for a felony offense that would meet the Kansas definition of sexually violent offense.</p>
<b>Commitment Procedures</b>	<p>Agency with jurisdiction over person shall inform county prosecutor regarding persons who will be released in 90 days who were convicted of sexually violent offense, or found not guilty by reason of insanity. Within 75 days of receiving notice from agency, the prosecutor may file a petition and the judge determines whether there is probable cause to believe the person is a sexually violent predator. The person is transferred for an evaluation by someone who is professionally qualified.</p> <p>Within 60 days, a trial is held. The person has right to an attorney, trial by jury, and examination by expert of choice.</p> <p>The court or jury determines on a unanimous basis whether, beyond a reasonable doubt, the person is a sexually violent predator.</p> <p>If the person is found incompetent to stand trial, a hearing is held where criminal rules of evidence apply. If court finds that the person did the act or acts, a final order is issued and the court considers whether to commit the person.</p> <p>The person is transferred to Social and Rehabilitation Services for control, care, and treatment in a secure facility, and shall be segregated from any other patient, and kept in a separate building or facility.</p>
<b>Location, Number Committed</b>	<p>Individuals are currently housed in the Larned Correctional Mental Health Facility.</p> <p>As of June 1998, more than 150 cases have been filed; 17 individuals are committed.</p>
<b>Treatment and Release Provisions</b>	<p>Each person committed shall be examined once every year regarding his or her mental condition. The report is delivered to the court, and the court conducts an annual review of the person's status.</p> <p>If the court determines that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, then the court shall set a hearing. The person has the right to be examined by expert of choice, paid by state if necessary.</p> <p>The state has the burden of proof at the hearing to prove that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released, is likely to engage in act of sexual violence.</p> <p>Person can file petitions for discharge. If the person files a petition without departmental approval and the court found a previous petition frivolous, or after a hearing, not to meet the release criteria, the court can deny the petition without a hearing if determined to be a frivolous petition.</p>
<b>Estimated Costs</b>	Approximately \$80,000 annually, per offender for treatment and confinement.
<b>Key Court Decisions</b>	Upheld by U.S. Supreme Court on June 23, 1997 ( <i>Kansas v. Hendricks</i> , 117 st.ct. 2072 (KS 1997)).
<b>Contact Person</b>	Terry Gross, Assistant Attorney General, (316) 792-4354

# Minnesota

<b>Year, Statute</b>	1939 Psychopathic Personality, Minn. Stat. § 253B.02, subd. 18b and 253B.185 1994 Sexually Dangerous Persons, Minn. Stat. § 253B.02, subd. 18c and 253B.185
<b>Definitions</b>	<p><i>Sexual psychopathic personality:</i> a person exhibiting any or all of the following: emotional instability, impulsiveness of behavior, lack of customary standards of good judgment or a failure to appreciate the consequences of personal acts—which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, "by habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses, and as a result, is dangerous to others."</p> <p><i>Sexually dangerous person:</i> (1) has engaged in a course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct. Inability to control sexual impulses need not be proven.</p> <p><i>Harmful sexual conduct:</i> sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another. Conduct described in the following criminal statutes create a rebuttal presumption that there is a substantial likelihood a victim will suffer serious physical or emotional harm: criminal sexual conduct in first through fourth degrees. If the conduct was motivated by the person's sexual impulses or was part of a pattern that had criminal sexual conduct as a goal, the presumption also applies to murder, manslaughter, assault, robbery, kidnapping, false imprisonment, incest, tampering with a witness, arson in the first degree, burglary in the first degree, terroristic threats, harassment and stalking.</p>
<b>Commitment Procedures</b>	<p>The process follows state's civil commitment law. County attorney prepares a petition. Court appointed examiner prepares a report. Second examiner selected by person and paid for by county. Court hears petition, with the individual given full procedural protections. The state must demonstrate by clear and convincing evidence that the individual meets the criteria.</p> <p>Individuals found to meet the criteria are committed to a secure treatment facility (Minnesota Sexual Psychopathic Personality Treatment Center or the Minnesota Security Hospital), or a treatment facility willing to accept the patient under commitment.</p> <p>Following the initial commitment, a written treatment report must be filed with the court within 60 days. A review hearing is held by the court to make a final determination regarding whether the individual should remain committed. A final determination results in a commitment for an "indeterminate period of time" to the treatment facility.</p>
<b>Location, Number Committed</b>	Persons committed receive treatment in the Minnesota Sex Offender Program, which has two sites: the Minnesota Sexual Psychopathic Treatment Center in Moose Lake and the Minnesota Security Hospital in St. Peter. As of July 1998, more than 220 individuals have been referred from Department of Corrections and 130 persons have been committed. Eight are completing sentences with the Department of Corrections.
<b>Treatment and Release Provisions</b>	<p>Patients can seek transfer, provisional discharge or discharge by a petition to a three-member special review board comprised of an attorney, a psychiatrist, and a mental health professional. Commissioner of Human Services makes decision, based on majority recommendation of the board.</p> <p>The Commissioner's decision can be appealed to a three-judge appeal panel appointed by the Supreme Court. Further decisions can be appealed to the Appeals Court and the Supreme Court.</p>
<b>Estimated Costs</b>	Approximately \$110,000 annually per offender on treatment and confinement costs.
<b>Key Court Decisions</b>	<p>The Minnesota Supreme Court upheld the constitutionality of the psychopathic personality statute in 1939 (<i>State ex rel. Pearson v. Probate Court</i>). The U.S. Supreme Court affirmed this decision in 1940.</p> <p>The Minnesota Supreme Court again upheld constitutionality of the psychopathic personality statute in 1994 (<i>In re Blodgett</i> 115 S Ct 146 (1994)). The U.S. Supreme Court refused to review the cases submitted on this statute in October 1994.</p> <p>The Minnesota Supreme Court upheld the sexually dangerous person law in December 1996 (<i>In re Linehan</i>, 557 N.W.2d 171, 189 (Minn. 1996))</p>
<b>Contact Person</b>	Stephen Huot, Department of Corrections, (651) 642-0279 Bonnie Lee, Department of Human Services, (651) 296-6918 Alan Held, Attorney General's Office, (651) 297-3070

## New Jersey (1998)

<b>Year, Statute</b>	P.L. 1998, c.71 (Senate Bill 895)
<b>Definitions</b>	<p><i>Sexually violent predator</i>: a person (18 years of age or older) who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity for commission of a sexually violent offense or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care, and treatment.</p> <p><i>Sexually violent offense</i>: aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping; criminal sexual contact; felony murder if the underlying crime is sexual assault; or an attempt to commit any of these offenses.</p>
<b>Commitment Procedures</b>	<p>When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice to the Attorney General 90 days, or as soon as practicable, prior to the anticipated release. The agency with jurisdiction shall provide the Attorney General with all relevant information.</p> <p>The Attorney General may initiate a court proceeding by the submission to the court of two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist. The Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the application if the court finds reasonable cause to believe the person is a sexually violent predator.</p> <p>If the court finds probable cause, it shall issue an order setting date for final hearing and authorizing temporary commitment to a secure facility designated for sexually violent predators pending the final hearing. In no event shall the person be released from confinement prior to the final hearing.</p> <p>The person shall receive a court hearing within 20 days from the temporary commitment order. The Attorney General is responsible for presenting the case to the court. A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.</p> <p>If the court finds by clear and convincing evidence that the person needs continued involuntary commitment, it shall issue an order authorizing this commitment. If the Department recommends it, the court can order conditional discharge with specific treatment and risk reduction conditions. Review hearings are to be conducted within at least six months. Allegations of failure to follow court conditions are heard by the court and can lead to a vacated order. No person committed while serving a term of incarceration shall be discharged by the court prior to his/her maximum term of incarceration.</p>
<b>Location, Number Committed</b>	The Department of Corrections is responsible for facility operation. Act takes effect in August 1999.
<b>Treatment and Release Provisions</b>	<p>The Division of Mental Health Services in the Department of Human Services shall provide or arrange for treatment. Such treatment shall be appropriately tailored to address the specific needs of sexually violent predators.</p> <p>A person committed under this act shall be afforded an annual court review hearing. If the court determines that commitment shall be continued, it shall execute a new order. The court shall conduct the first review hearing 12 months from the date of the first and subsequent review hearings annually thereafter.</p> <p>A person discharged by the court shall have a discharge plan prepared by the treatment team. The treatment team shall give the person an opportunity to participate in the formulation of the plan.</p>
<b>Estimated Costs</b>	Estimate \$85,000 annually, per offender on treatment and confinement. <b>[TAKEN FROM OLD DESCRIPTION.]</b>
<b>Key Court Decisions</b>	No decisions to date.
<b>Contact Person</b>	Ray Deeney, Department of Human Services, Division of Mental Health, (609) 777-0711



## New Jersey (1994)

<b>Year, Statute</b>	Laws of 1994, Chapter 134 § 1
<b>Definitions</b>	The civil commitment law applies to all persons. The only special provisions for offenders are procedural and apply to those offenders who never qualify for parole. Offenders with a conviction of aggravated sexual assault, sexual assault or aggravated criminal sexual contact, if the sentencing court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, are evaluated at the end of their term, along with any other inmates when the Department of Corrections or the Parole Board believes may meet the state's standards of involuntary commitment, including the presence of mental illness. The definition of <i>mental illness</i> is specifically not limited to finding of "psychosis" or "active psychosis."
<b>Commitment Procedures</b>	<p>The commitment is initiated by the parole board or the superintendent of facility where the person was held believe the person may be in need of involuntary commitment; the procedures follow the state's overall involuntary commitment laws.</p> <p>The attorney general has principle authority to file petitions for inmates; this can be delegated to county prosecutors. The petition filing must be supported by two clinical certificates from psychiatrists or physicians; psychologists are not acceptable.</p> <p>Persons paroled prior to serving the maximum term are not subject to commitment because the parole standards account for dangerousness. The commitment process occurs while the person is within the jurisdiction of the Department of Corrections.</p> <p>With a finding of probable cause, the person is temporarily committed to a facility for the criminally insane for 20 days. The court makes the required finding based on a standard of clear and convincing evidence. There is no jury trial.</p> <p>If the court imposes conditions lasting longer than 6 months, a review hearing will be set.</p>
<b>Location, Number Committed</b>	Forensic Psychiatric Hospital in Trenton. As of June 1998, 101 sex offenders were committed. Approximately one-third have been discharged. Offenders referred at local level, no central record of referrals available.
<b>Treatment and Release Provisions</b>	<p>No person shall be discharged prior to expiration of the maximum term that would have been served had the person not been committed.</p> <p>If an inmate is committed prior to expiration of term and no longer needs involuntary commitment, the person is returned to appropriate authority to complete any remaining term of incarceration, with credit for time served.</p>
<b>Estimated Costs</b>	Estimate \$85,000 annually, per offender on treatment and confinement.
<b>Key Court Decisions</b>	State Supreme Court upheld statute in August 1996 ( <i>In the matter of D.C.</i> , 1996.N.J.351 ( <a href="http://www.versuslaw.com">www.versuslaw.com</a> )).
<b>Contact Person</b>	Ray Deeney, Department of Human Services, Division of Mental Health, (609) 777-0711

## North Dakota

<b>Year, Bill</b>	1997; House Bill 1047
<b>Definitions</b>	<p><i>Sexually dangerous individual:</i> an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.</p> <p><i>Sexually predatory conduct:</i> engaging or attempting to engage in a sexual act or sexual contact with a victim who is less than 15, or a minor 15 or older and the actor is the minor's parent, guardian, or otherwise responsible for the victim's welfare, or the victim is a minor and the actor is an adult. Also includes behavior where the victim's consent is compromised by a variety of means, including force or threat of imminent death, serious bodily harm, or kidnapping; threats that would render a person of reasonable firmness incapable of resisting; administration of intoxicants or other similar means; the victim is unaware that a sexual act is being committed; the victim suffers from a mental disease or defect that renders them incapable of understanding the nature of the sexual act; the victim is in custody or detained in a hospital, prison, or other institution and is under the supervisory authority or disciplinary control of the act; or the actor knows or should have known that the contact is offensive to the victim.</p>
<b>Commitment Procedures</b>	<p>The State's Attorney files a petition in district court alleging that an offender is a sexually dangerous individual. Upon filing a petition, the court shall determine whether to issue an order for detention to hold the respondent for evaluation and subsequent hearing if there is probable cause to believe that the respondent is a sexually dangerous individual.</p> <p>The evaluation must be conducted by one or more experts chosen by the executive director of the Department of Human Services. The respondent subject to evaluation may retain an expert to perform the evaluation or testify on the respondent's behalf.</p> <p>Within 30 days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director of the Department of Human Services.</p> <p>The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate facility/program must be the least restrictive alternative necessary to meet statutory purposes. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.</p>
<b>Location, Number Committed</b>	Placement will be at the forensic unit of the state hospital temporarily, until a permanent facility is chosen. As of April 1998, there has been one referral and no commitments.
<b>Treatment and Release Provisions</b>	<p>A committed individual must remain in the care, custody, and control of the executive director of the Department of Human Services until, in the opinion of the executive director, the individual is safe to be at large and has received the maximum benefit of treatment. Each committed individual must have an examination of that individual's mental condition at least once a year.</p> <p>A committed individual has a right to petition the district court for discharge, annually. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.</p> <p>The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge.</p>
<b>Estimated Costs</b>	Estimate \$100,000 annually per offender on treatment and confinement.
<b>Key Court Decisions</b>	No significant decisions to date.
<b>Contact Person</b>	Karen Larson, Department of Human Services, (701) 328-2310 Alex Schweitzer, North Dakota State Hospital, (701) 253-3964

## South Carolina

<b>Year, Bill</b>	1998, General Bill 4360
<b>Definitions</b>	<p><i>Sexually violent predator</i>: a person who has been convicted of a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.</p> <p><i>Sexually violent offense</i>: criminal sexual conduct; criminal sexual conduct with a minor; engaging a child for a sexual performance; producing, directing, or promoting sexual performance by a child; assault with intent to commit criminal sexual conduct; incest; buggery; committing or attempting a lewd act upon a child under the age of 16; and attempt to commit or accessory to any of the above listed offenses.</p>
<b>Commitment Procedures</b>	<p>When a person has been convicted of a sexually violent offense, the agency with jurisdiction shall give written notice to the multidisciplinary team and the attorney general at least 90 days prior to release from confinement. The Director of the Department of Corrections chairs the multidisciplinary team which consists of a representative from the Department of Corrections, a representative from the Department of Probation, Parole, and Pardon Services, a representative from the Department of Mental Health who is trained in treating sexually violent predators, a retired judge, and the chief attorney of the Office of Appellate Defense. The team, within 30 days of receiving notice, shall assess whether or not the person satisfies the definition of a sexually violent predator. Once the assessment is made, the team forwards its report to the prosecutor's review committee (members appointed by the attorney general, who chairs the committee) who make a determination as to whether probable cause exists to believe a person is a sexually violent predator.</p> <p>Upon this determination, the attorney general may file a petition with the court in the jurisdiction where the person committed the offense, requesting that the court make a probable cause determination as to whether the person is a sexually violent predator.</p> <p>The person must be provided with notice of the opportunity to appear in person at a hearing to contest probable cause. The hearing must be held within 72 hours. If the court determines that probable cause exists, the person must be taken into custody, if he is not already confined in a secure facility for an evaluation conducted by a qualified expert approved by the court.</p> <p>Within 60 days after the probable cause hearing, the court shall conduct a trial to determine whether the person is a sexually violent predator. The attorney general can request a jury trial. The court or jury shall determine beyond a reasonable doubt whether the person is a sexually violent predator.</p> <p>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 the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.</p>
<b>Location, Number Committed</b>	Control, care, and treatment must be provided at a facility operated by the Department of Mental Health. The Department of Mental Health may enter into an agreement with the Department of Corrections for the control, care, and treatment of sexually violent predators. No individuals referred or committed to date.
<b>Treatment and Release Provisions</b>	<p>A person committed shall have an examination of his mental condition performed once every year. The annual report must be provided to the court which committed the person, the attorney general, the solicitor who prosecuted the person, and the multidisciplinary team. The court shall conduct an annual hearing to review the status of the committed person.</p> <p>A committed individual has a right to petition the district court for discharge, annually. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The attorney general shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.</p> <p>If the person files a petition without departmental approval and the court found a previous petition frivolous, or after a hearing, not to meet the release criteria, the court can deny the petition without a hearing if determined to be a frivolous petition.</p>
<b>Estimated Costs</b>	Department of Mental Health estimates yearly costs of treatment to be \$940,000, based on a 24-bed facility.
<b>Key Court Decisions</b>	No significant decisions to date.
<b>Contact Person</b>	Dr. Larry Montgomery, Director of Inpatient Services, Department of Mental Health, (803) 734-7790

# Washington

<b>Year, Statute</b>	1990 Revised Code of Washington § 71.09
<b>Definitions</b>	<p><i>Sexually violent predator:</i> any person who has been convicted of, or charged with, at least one crime of sexual violence and suffers from a mental abnormality or personality disorder that makes the person likely to engage in future predatory acts of sexual violence if not confined in a secure facility. The state must provide evidence of a recent overt act whenever an individual is not incarcerated at the time the petition is filed.</p> <p><i>Predatory:</i> acts directed toward strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.</p> <p><i>Sexually violent offense:</i> rape in the first degree; rape in the second degree by forcible compulsion; rape of a child in the first or second degree; statutory rape in the first or second degree; indecent liberties by forcible compulsion; indecent liberties against a child under 14; incest against a child under 14; child molestation in the first or second degree. Also includes felony offenses in effect prior to 1990 that are comparable to sexually violent offenses, as well as federal and out-of-state convictions for felonies that are comparable. The following offenses found to be sexually motivated are also eligible: murder in the first or second degree; assault in the first or second degree; assault of a child in the first or second degree; burglary in the first degree; residential burglary or unlawful imprisonment. (Incest is listed but because of the definition for "predatory," few incest offenders are eligible.)</p>
<b>Commitment Procedures</b>	<p>When an offender previously convicted of a sexually violent offense is about to be released from confinement, the End of Sentence Review Committee (ESRC), comprised of staff from the Department of Corrections, Department of Social and Health Services, the Indeterminate Sentence Review Board, and two members of law enforcement, assesses the offender's future dangerousness, likelihood of reoffending, and threat to the community. For those offenders who meet criteria, the ESRC makes recommendations to the prosecuting attorney for civil commitment as a sexually violent predator. Upon receiving information from the ESRC the prosecuting attorney may petition for involuntary civil commitment. The court determines if there is probable cause and if so, the person is taken into custody. A hearing is held within 72 hours. The person has the right to counsel, to present evidence, and cross-examine witnesses. If probable cause is found, the offender is transferred to an appropriate facility for evaluation.</p> <p>Within 45 days, a trial is held. The person has right to jury trial, a lawyer, and an examination by an expert of choice. State must prove that the person meets the definition beyond a reasonable doubt. Jury verdict must be unanimous.</p> <p>Persons found to be predators are transferred to a facility until such time as the person's mental abnormality or personality disorder has so changed that the person is either safe to be at large or released to a less restrictive environment. If court or jury determines that conditional release to a less restrictive alternative is in the person's best interest and will adequately protect the community, and minimum statutory conditions are met, the court shall direct conditional release.</p>
<b>Location, Number Committed</b>	<p>Committed individuals are housed at the Special Commitment Center, a facility run by the Department of Social and Health Services and located in a state prison.</p> <p>As of June 1998, 196 individuals have been referred, 41 individuals have been committed, and an additional 24 are awaiting trial. One person was sent directly to a less restrictive alternative after the trial and a second was released to the community, under supervision, following confinement and treatment.</p>
<b>Treatment and Release Provisions</b>	<p>Each person is examined annually to determine whether he or she is non-dangerous enough for release, and also may be evaluated by an examiner of choice. The reports are provided to the court.</p> <p>If the secretary determines the person has changed such that he/she is not likely to engage in predatory acts of sexual violence, the secretary shall authorize the person to petition the court for conditional release or unconditional discharge. The court shall schedule a hearing within 45 days. The prosecuting attorney or attorney general shall have the right to have the person examined by an expert of choice.</p> <p>The hearing is before a jury if demanded by either side. The state has to prove beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not safe to be at large and that if conditionally released or unconditionally discharged, is likely to engage in predatory acts of sexual violence.</p> <p>The person can petition the court for discharge without the secretary's approval. The secretary shall provide an annual written notice of the right to petition the court. If the person does not waive the petition right, the court shall set a show cause hearing to determine whether facts exist to warrant a hearing. The person has a right to an attorney at the hearing, but not the right to be present. If the court finds probable cause, a hearing shall be set. The person has a right to attend the hearing and shall receive all constitutional protections afforded at the initial commitment hearing.</p>

## **Washington (Continued)**

<p><b>Treatment and Release Provisions (continued)</b></p>	<p>The state has a right to a jury trial and to have the person examined by an expert of choice. The person has right to an expert's evaluation, paid for by the state if the person is indigent. The burden of proof at the hearing is upon the state to prove beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is likely to engage in predatory acts of sexual violence if conditionally released or unconditionally discharged.</p> <p>Conditional release to a less restrictive alternative is possible. The release can be revoked or modified with a court hearing. Annual reviews of conditional release are necessary, until unconditional discharge occurs.</p>
<p><b>Estimated Costs</b></p>	<p>\$70,000 (approximately) annually, per offender on treatment and confinement. An additional \$60,000 (approximately) is spent on legal fees for commitment proceedings.</p>
<p><b>Key Court Decisions</b></p>	<p><i>Young v. Weston</i>, a constitutional challenge to the statute, is pending before the 9th Circuit Court of Appeals. The statute was previously found constitutional by the Washington State Supreme Court (1993) and unconstitutional by the U.S. District Court (1995). A separate action challenging the treatment conditions at the facility (<i>Turay v. Weston</i>, No. C91-664WD (W.D. Wash. June 6, 1994)) caused the federal court to appoint a special master in 1994.</p>
<p><b>Contact Person</b></p>	<p>Mark Seling, Special Commitment Center, (253) 589-6204</p>

# Wisconsin

<b>Year, Statute</b>	1994 Wisconsin Statutes, Chapter 980
<b>Definitions</b>	<p><i>Sexually violent person:</i> a person who has been convicted of, or adjudicated delinquent for, a statutorily defined sexually violent offense, (or found not guilty by reason of insanity or mental disease, defect or illness) and who is dangerous because of a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.</p> <p>"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to engage in acts of sexual violence.</p> <p><i>Sexually violent offense:</i> sexual assault; sexual assault of a child; repeated acts of sexual assault of the same child; incest with a child; child enticement. Also, any of the following crimes found to have been sexually motivated: intentional homicide; reckless homicide; battery with great bodily harm; false imprisonment; taking hostages; kidnapping and burglary.</p>
<b>Commitment Procedures</b>	<p>When a person is within 90 days of discharge or release from a sentence, juvenile commitment, or insanity commitment, imposed for sexually violent offense, a petition can be filed by the attorney general or specified district attorneys for a hearing to determine if there is probable cause to believe an individual is a sexually violent person.</p> <p>If the court finds probable cause, the court orders the person into custody for an evaluation. A trial is held within 45 days, unless time period is waived. The criminal (counsel) rules of evidence apply to the trial, including proof beyond a reasonable doubt.</p> <p>On the basis of a second hearing, the court specifies either institutional care in a secure mental health facility or supervised release. The department is to arrange for control, care and treatment in the least restrictive manner. The person is committed until he or she is no longer a sexually violent person.</p>
<b>Location, Number Committed</b>	<p>The Wisconsin Resource Center is the correctional facility that provides mental health treatment within the Department of Health and Family Services.</p> <p>As April 1998, 107 individuals had been committed. Two individuals have been discharged from the facility and seven are on supervised release in the community.</p>
<b>Treatment and Release Provisions</b>	<p>The person is examined within six months of commitment and at least once yearly thereafter to determine if he or she has made sufficient progress to be entitled to transfer to a less restrictive facility, supervised release, or discharge. The person can retain or have appointed a qualified expert examiner. The committing court can also order the person re-examined at any time.</p> <p>Petitions for supervised release are allowed every six months. However, the facility director may petition at any time. The person is entitled to court-appointed counsel.</p> <p>Within 20 days, the court shall appoint one or more expert examiners to evaluate person. The court hears the petition without a jury within 30 days of expert's report.</p> <p>The court shall grant petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and it is still substantially probable that the person will engage in acts of sexual violence if not confined in a secure facility. The court may consider the nature and circumstances of behavior alleged in original commitment petition, the person's mental history and present mental condition, where the person will live and support self and access to and participation in treatment.</p> <p>If the person is found appropriate for supervision, a plan for supervision and treatment will be developed.</p> <p>Petitions for discharge: If the DHSS secretary determines the person is no longer sexually violent, the secretary shall authorize the person to petition the committing court for discharge. At discharge hearings, a trial to jury of six can be requested (<i>State v. Post</i>, 541 N.W.2d 115, (Wis. 1995)). A hearing is held within 45 days.</p> <p>The prosecutor can have the person examined by an expert of choice. A trial is held with a standard of clear and convincing evidence that the person is still a sexually violent person.</p> <p>The person can petition for discharge without the secretary's approval. The person has a right to an attorney but not to be present at the probable cause hearing. If probable cause is found, the court schedules a hearing. The person has the right to be present and have counsel. The state can have the person evaluated by an expert of choice. The state must prove its case by a clear and convincing standard that the person is still a sexually violent person. If the state does not meet its burden of proof, the person is discharged from custody or supervision. If the burden is met, the court can modify the existing commitment order.</p> <p>In addition, the person can petition the court at any time. If the person previously filed for discharge without the secretary's approval and the court determined that the petition was frivolous, or the person was still sexually violent, the court shall deny any subsequent petition without a hearing unless the petition describes a changed condition. If a hearing is warranted, a probable cause hearing will be set.</p>

## **Wisconsin (Continued)**

<b>Estimated Costs</b>	\$82,125 annually per patient on treatment and confinement.
<b>Key Court Decisions</b>	Statute was found constitutional in December 1995 by the Wisconsin Supreme Court ( <i>State v. Oldakowski</i> , No. 94-2357 (S. Ct. Dec. 8, 1995)). Approximately 12 individuals were found not to meet the statutory definition at the trial court level either at the probable cause stage or following trial.
<b>Contact Person</b>	Linda Harris, Department of Health and Social Services, (608) 267-7909

## **APPENDIX: WASHINGTON STATE'S END OF SENTENCE REVIEW COMMITTEE**

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### **Rules of Order July 24, 1998**

1. The End of Sentence Review Committee will meet from 9:00 a.m. until 4:00 p.m. the first Thursday and Friday of each month. In case of a holiday the committee will be rescheduled.
2. The End of Sentence Review Committee will review all offenders who have been convicted of a sex offense, sexually motivated offense, or a kidnapping offense in accordance with RCW 72.09.345. In addition, the committee will also review special needs offenders who are considered a high risk to commit a violent offense. Due to the volume of cases requiring review, the End of Sentence Review Committee shall utilize 3 sub-committees in the following manner. (The membership and guidelines for these committees will be further defined in a separate section of this document.)
  - A. Cases that score Level I on the Risk Assessment Classification Tool and those which require coordinated case management for Child Protective Services (CPS) or Adult Protective Services (APS) but do not require other committee action, will be referred to the Level I and CPS Sub-Committee. This sub-committee shall refer cases back to the End of Sentence Review Committee if additional action is needed.
  - B. Cases under the jurisdiction of the Juvenile Rehabilitation Administration (JRA) will be reviewed by the JRA Sub-Committee for risk level classification for the purpose of community notification. The JRA Sub-Committee will refer all cases requiring consideration for civil commitment under RCW 71.09 to the End of Sentence Review Referral Sub-Committee. In addition, the JRA Sub-Committee may also refer cases to the End of Sentence Review Committee for DCFS placement, CPS and DD Services.
  - C. All cases submitted by the state agencies or other entities appearing to be possible cases for civil commitment referral shall be reviewed by the End of Sentence Review Referral Sub-Committee.
3. The agency with jurisdiction will review and prepare case files for committee review. The presentation will include a verbal summary of the offender's criminal history and history of sexual deviancy. A completed Risk Level Classification Tool and packet of supporting information will be provided for each committee member.
4. Following the presentation, committee staff will call for discussion and questions, this will be recorded.
5. Committee staff will call for the decision. The decision will be a simple majority, this will be recorded.
6. The recorded record will be labeled and retained by the End of Sentence Review Chair.



7. The committee will not review in excess of 20 cases per day.
8. End of Sentence Review Committee membership
  - A. Department of Corrections representation
    - End of Sentence Review Manager
    - Law Enforcement Liaison
    - Office of Correctional Operations Field Representative
    - Office of Correctional Operations Institutional Representative
  - B. Department of Social and Health Services representation
    - Juvenile Rehabilitation Administration Sub-Committee Chair
    - Mental Health representation
    - Victim Witness Program Manager
    - Division of Developmental Disabilities representative
    - Children's Administration (CPS) representative
  - C. Law enforcement representative
    - City
    - County

NOTE: Two investigative staff from the Office of the Attorney General will provide support to the End of Sentence Review Committee.

9. The Secretary of the Department of Corrections will appoint the Chair of the End of Sentence Review Committee.
10. A quorum will consist of six voting members. Voting members are responsible for ensuring adequate representation for each meeting. Representative from other agencies may send another representative from their agency if the representative is familiar with the End of Sentence Review process and the mission of the committees.

OBSERVERS: The ESRC welcomes appropriate staff who have previous approval of the ESR Chair and wish to observe the End of Sentence Review process. It is important that visiting staff do not interrupt the ESRC process in any manner while observing. All visiting staff are requested to report in one-half hour prior to committee, at which time they will be briefed on the ESRC process in conjunction with being provided written material which will assist in the further understanding of this process. Requests for other individuals to attend the committee may be made in writing to the End of Sentence Review Chair and will be reviewed on a case by case basis. A signed confidentiality agreement will be required prior to attendance.

## Juvenile Rehabilitation Administration (JRA) Sub-Committee

1. The JRA Sub-committee will meet from 9:30 a.m. until 4:00 p.m. the fourth Thursday of each month, with the exception of November and December.
2. The Sub-committee is comprised of the following 14 voting members:
  - A. Juvenile Rehabilitation Administration representatives (7)
    - Regional Sex Offender Treatment Coordinators (6)
    - Institutional Sex Offender Treatment Coordinator (1) (The institutional coordinator presenting the case will have the voting responsibility.)
  - B. Department of Corrections representative (1)
  - C. Law Enforcement Notification representatives (2)
  - D. Department of Social and Health Services representatives (4)
    - Children's Administration representatives (2)
    - Developmental Disabilities representative (1)
    - Victim Witness Notification representative (1)
3. The JRA Chair will vote in the case of a tie; at his/her discretion the chair may refer a case in the event the committee cannot reach a consensus to the End of Sentence Review Committee.
4. A quorum will consist of 8 voting members. In the event a representative is absent from committee, the representative may give proxy to another committee member. Representatives from other agencies may send another representative from their agency if the representative is familiar with the process, use of the Risk Level Classification Tool and the mission of the Committee.

## **Level I/Child Protective Services (CPS) Sub-Committee**

1. The Level I/CPS Sub-Committee will meet from 8:30 a.m. to 4:00 p.m. on the Tuesday prior to the End of Sentence Review Committee meeting.
2. The sub-committee is comprised of 8 members, the voting members will consist of the following:
  - A. Department of Corrections (3)
    - Law Enforcement Liaison, Chair
    - Community Protection CCO3
    - Community Protection CCO3
  - B. Law Enforcement (1)
  - C. Department of Social and Health Services (4)
    - Juvenile Rehabilitation Administration (1)
    - Division of Child and Family Services (2)
    - Adult Protective Services (1)
3. The sub-committee will review all sex offenders who scored Level I on the risk level classification tool and non-sex offenders who may require referral to DSHS for CPS or APS review and possible intervention.
4. The quorum will consist of 5 voting members; in the event a representative is absent from the committee the representative may give proxy to another committee member. Decisions that would aggravate a Level I offender to a Level II or III offender will be referred to the End of Sentence Review Committee for decision.
5. The Level I/CPS Sub-Committee will refer all cases which they determine require Level II or Level III notification to the End of Sentence Review Committee for concurrence.

## **End of Sentence Review Referral Sub-Committee**

1. End of Sentence Review Sub-Committee will meet prior to the End of Sentence Review Committee on the first Thursday of each month.
2. The End of Sentence Review Sub-Committee's purpose is to refer cases involving potential sexually violent predators to prosecuting authorities for review and filing (or decline) for civil commitment under RCW 71.09.
3. The Sub-Committee's membership is the same as the End of Sentence Review Committee except for the addition of one representative from the Indeterminate Sentence Review Board. It is assumed that this second level of review will afford the committee the opportunity to obtain additional materials e.g., police reports, court documents, treatment records, etc. prior to making final decision to refer the case.

## Criteria for End of Sentence Review Decisions

Revised Code of Washington 71.09 referrals will be made to the appropriate prosecuting authority when it appears an individual:

- Has been convicted of or charged with a crime of sexual violence
- Suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secured facility.

Revised Code of Washington 71.05 referrals will be made to the appropriate mental health authority when it appears an individual with a history of mental illness and/or developmental disabilities has one or more of the following factors as a result of a mental illness or developmental disabilities: a history of

- Violence toward others
- Destruction of property
- Mental health evaluations, assessments and/or findings of incompetence or insanity
- Psychiatric civil commitments
- Threatening others with violence

Or is currently threatening a potential victim(s) as the result of an active mental illness

Or is gravely disabled, a danger to self or others

Or is unable to function in general population as a result of a mental illness

The following represents general guidelines regarding the types of notification that may be issued when a sex offender is released from a confined facility. It is the position of the committee that decisions regarding notification will be made in the best interest of community protection; therefore, all cases will be considered on an individual basis and may require deviation from the guidelines noted below.

### Level I Notification

- The offender has been convicted of a registerable offense
- The offender has a risk level score of 46 or less and no notification considerations

### Level II Notification

- The offender has been convicted of a registerable offense
- The offender has a risk level score of 46 or less and/or one or two notification considerations

### Level III Notification

- The offender has been convicted of a registerable offense
- The offender has a risk level score of 46 or less and/or three or more notification considerations, or assessment score of 47 or higher.

### Potential Victim Notification

- The offender is making or has made threats to the victim following sentencing of which the victim is unaware
- The department has information regarding the offender's potential risk to the victim of which the victim is unaware

**Law Enforcement Alert**

- The offender has not been convicted of a sex offense
- The offender presents a risk to commit a violent offense within the community based on his or her current threats, institution behavior or past history of sexually motivated offenses
- The offender presents a risk to law enforcement based on his or her current threats or past history of community acts directed towards law enforcement officers

**Child Protective Services Notification, Department of Social and Health Services**

- The offender has offended against a minor victim
- The offender's behavior places a known minor at risk
- The offender is returning to a residential situation that places a minor at risk

**Division of Developmental Disabilities, Department of Social and Health Services**

- Offender has an IQ below 69
- Offender has been a past recipient of DDD services
- Offender appears to have a developmental disability (e.g., mental retardation, developmental delay (ages birth to six years), cerebral palsy, epilepsy, autism, or other neurological conditions similar to mental retardation). Criteria for eligibility is defined in the state law.

Other Notifications: Department of Licensing, Department of Health, Superintendent of Public Instruction, etc.

- Based on a need to know, necessary, and relevant information

## RESOURCES

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Holmgren, Brian K. (1998) "Sexually Violent Predator Statutes: Implications for Prosecutors and Their Communities." *The Prosecutor* 32, No. 3.

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