

SEXUAL PREDATOR COMMITMENT LAWS

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***Washington State
Institute for
Public Policy***

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WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY

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SEXUAL PREDATOR COMMITMENT LAWS

Nine states have statutes that authorize the confinement and treatment of highly dangerous sex offenders following completion of their criminal sentence: Arizona, California, Illinois, Kansas, Minnesota, New Jersey, North Dakota, Washington, and Wisconsin. These laws are commonly referred to as “sexual predator” laws. Other statutes authorize commitment and treatment for sex offenders as an alternative to sentencing.

This paper reviews the four principle categories of civil commitment laws for dangerous sex offenders. Summaries of individual state statutes are also included.

SEXUAL PSYCHOPATHY LAWS

Sexual psychopath laws were enacted in half the states starting in 1938. The statutes rested on the assumption that sex offenders were “mad, not bad,” should receive treatment, and once cured, could be safely released.

The trend toward adopting these laws peaked in the 1960s, with the majority repealed in the 1970s and 1980s. By the 1990s, 13 states and the District of Columbia retained their statutes but few were used for commitments.¹ The arguments for repeal centered on concern for constitutional rights, the ineffectiveness of treatment, and a desire to concentrate on criminal sentences for sex offenders.

Illinois’s statute was passed in 1938 and is still operational; the law provides an *alternative* to criminal prosecution. The state must choose to *convict and punish* an offender through the criminal system, *or* to pursue a civil commitment under this statute. If found to be a “sexually dangerous person,” the individual is committed to the Department of Corrections until deemed to no longer be dangerous. The U.S. Supreme Court found the statute constitutional in 1986.² In 1997, Illinois also adopted a “sexually violent person” law (described below).

Minnesota enacted a “psychopathic personality” statute in 1939, authorizing 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 1940.³

For several decades Minnesota’s law was used infrequently; a total of only 221 individuals were committed under this statute from 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

¹ Gary Gleb, *Washington’s Sexually Violent Predator Law: The Need to Bar Unreliable Psychiatric Predictions of Dangerousness From Civil Commitment Procedures*, UCLA Law Review 39:215.

² *Allen v. Illinois*, 478 U.S. 364 (1986).

³ *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 287 N.W. 297, 302 (1939), affirmed 309 U.S. 270, 60 Supreme Court 523 (1940).

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 Corrections was evaluating all high-risk sex offenders for possible commitment prior to their scheduled release.

The state had some difficulty proving that offenders had “utter lack of power to control” sexual impulses, a required element of the statute, particularly for those who had been confined in a prison setting and had few opportunities to reoffend. As a remedy, the 1994 Legislature enacted a “sexually dangerous persons” statute. The Minnesota Supreme Court upheld this “dangerous persons” statute in December 1996.⁴

MENTAL HEALTH COMMITMENT

When New Jersey considered legislation for serious sex offenders in 1994, the legal challenges to Washington’s civil commitment law caused lawmakers to seek another approach. The legislature chose instead to modify its existing civil commitment law to indicate a sexually dangerous person as a *specific type of person* eligible for consideration under the mental health commitment laws.

New Jersey’s statute provides that persons whose conduct is identified by the sentencing court as characterized by a “pattern of repetitive, compulsive behavior,” or who are identified by the Department of Corrections or the Parole Board, be evaluated at the end of their term for potential commitment. Because the legislature determined many sex offenders who pose significant public safety risks are not psychotic, the legislature amended the definition of mental illness to specifically not require a finding of psychosis.

POST-CONVICTION COMMITMENT

Canada’s Dangerous Offenders Act requires indefinite confinement for individuals found to be dangerous offenders. The law applies to any person convicted of a serious personal injury offense who constitutes a danger to the life, safety, or the physical or mental well being of others. Commitment occurs after an offender is convicted and takes the place of sentencing.

A 1997 bill removed judicial discretion in determining whether offenders found to be dangerous are to be committed.

As of June 1997, 188 people were classified as dangerous offenders and were housed in federal institutions.⁵ The vast majority (90 percent) were convicted of sexual offenses.

⁴ *In re Linehan*, 557 N.W.2d 171, 189 (Minn. 1996)

⁵ Fact Sheet: *High-Risk Offenders*, Ottawa: Department of the Solicitor General of Canada, June 1997.

POST-PRISON COMMITMENT

Arizona, California, Illinois, Kansas, North Dakota, Washington, and Wisconsin authorize involuntary civil commitment of highly dangerous sex offenders upon release from prison.

As of August 1997, more than 240 offenders have been involuntarily committed in six states.⁶

Illinois's Sexually Violent Person Act and North Dakota's law were recently enacted; Arizona has not begun accepting referrals for commitment. No offenders have been committed in two states: Arizona and North Dakota. Illinois has not committed anyone under the 1997 Sexually Violent Person Act.

In December 1996, the U.S. Supreme Court Review heard arguments concerning the constitutionality of the Kansas statute.⁷ Washington State's Attorney General filed an amicus brief on this case, along with Attorneys General from several other states. The U.S. Supreme Court upheld the statute in June 1997, in a five-to-four decision.

Washington State's facility for sexually violent predators has been under an injunction since 1994. A U.S. District Court ruled that the facility was making inadequate progress toward a comprehensive treatment program. The court appointed a special master to oversee the program's progress toward achieving court-ordered conditions.⁸

The following section provides detailed descriptions of the statutes authorizing involuntary civil commitment of serious sex offenders.

⁶ Numbers based on a telephone survey of representatives in jurisdictions known to have sex offender commitment laws, conducted by the Washington State Institute for Public Policy in August and September 1997.

⁷ *Kansas v. Hendricks*, 117 st.ct. 2072 (KS 1997).

⁸ *Turay v. Weston*, No. C91-664WD (W.D. Wash. June 6, 1994) Order and Injunction.

Arizona

Year Enacted	1996, Arizona Revised Statutes 13
Definitions	<i>Sexually violent predator:</i> A person charged with or has been convicted of a sexually violent offense and who suffers from a paraphilia that makes the person likely to engage in predatory acts of sexual violence.
Commitment Procedures	<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 there is 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 the state hospital or a licensed behavioral health or mental health inpatient treatment facility. The person shall remain in facility until paraphilia has so changed that the person would not be a threat to public safety.</p>
Location, Number Referred, Number Committed	The law went into effect on July 1, 1996. No commitments to date. Placement will be at the forensic wing of the state hospital.
Treatment and Release Provisions	<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 will adequately protect the community. 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 to 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 receives 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>
Legal Status	No decisions to date.
Contact Person	Gene Messer, Arizona State Hospital, (602) 220-6005

California

Year Enacted	1996, Welfare and Justice Code, sec. 6600
Definitions	<i>Sexually violent predator</i> : a sex offender convicted of specified sex offenses (committed by force, violence, duress, menace or fear of injury of a victim or another person), such offenses committed against two or more victims, and the person is determined to have a diagnosed mental disorder that makes it likely that they will engage in sexually violent criminal behavior upon release from the California Department of Corrections.
Commitment Procedures	<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 that 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, two independent professionals examine the person. 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.</p> <p>The person is committed to the Department of Mental Health for 2 years for treatment in a secure facility.</p>
Location, Number Referred, Number Committed	<p>Committed individuals are housed at the Atascadero State Hospital.</p> <p>As of September 1997, 1,465 offenders referred, 43 committed; 41 trials pending.</p>
Treatment and Release Provisions	<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>
Legal Status	The First Appellate District upheld the statute as constitutional (<i>People v. Superior Court (Cain)</i> (1996) 49 Cal.App.4 th , see also <i>People v. Putney</i> , 1997.CA.726 (http://www.versuslaw.com)).
Contact Person	George Bukowski, Department of Mental Health, (916) 327-9348

Illinois (a)

Year Enacted	1938, Sexually Dangerous Person Act, Chapter 116
Definitions	<i>Sexually dangerous person:</i> Someone suffering from a mental disorder continually for at least one year, coupled with criminal propensities to the commission of sex offenses, and who has demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children.
Commitment Procedures	<p>The state can petition the court to initiate commitment proceedings if the person has charges pending for a criminal offense indicating sexual dangerousness. The state can either convict and punish the person accused of a sexual offense <u>or</u> commit and treat the person under this statute.</p> <p>The court appoints two qualified psychiatrists to determine whether person meets criteria. The person has a right to jury trial and counsel. State must prove case beyond a reasonable doubt.</p> <p>If the person is declared sexually dangerous, he or she is committed to a treatment center until deemed no longer dangerous. The Director of Corrections is to provide care and treatment designed to effect recovery. If found not to be sexually dangerous, person can be tried for the crime.</p>
Location, Number Referred, Number Committed	Big Muddy Correctional Center, 160 individuals committed under Sexually Dangerous Person Act. Offenders referred at local level, no central record of referrals available.
Treatment and Release Provisions	<p>The person can file application showing recovery and petition for release at any time following commitment. By state regulation, a staff psychiatrist must review person's confinement every 6 months.</p> <p>Committing court must hear all applications for release. If found no longer to be dangerous, the court orders discharge and every information and indictment underlying the criminal charge is quashed. Those found to be dangerous remain in the department's custody. When Director determines someone committed under this statute appears to no longer be dangerous, but institutional confinement makes such a conclusion uncertain, the Director can petition the court for conditional release authorization.</p> <p>The court can order the person released under supervision that will protect the public. If the person violates the supervision conditions, the court shall revoke the conditional release and re-commit the person.</p>
Legal Status	<p>Statute upheld in Illinois Court of Appeals (1951) and 7th Circuit (1958).</p> <p>The U.S. Supreme Court upheld statute in 1986 (<i>Allen v. Illinois</i>, 478 U.S. 364 (1986)).</p>
Contact	Big Muddy Correctional Center, (618) 437-5300

Illinois (b)

Year Enacted	1997, Sexually Violent Person Act, Senate Bill 6
Definitions	<i>Sexually violent person:</i> A person who has been convicted of a sexually violent offense, 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.
Commitment Procedures	<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.</p>
Location, Number Referred, Number Committed	Sexually Violent Persons Act effective January 1, 1998. The Department of Human Services shall place a person committed in a secure facility provided by the Department of Corrections. As of September 1997, there are no referrals and no commitments under the Act.
Treatment and Release Provisions	<p>Persons are committed to the custody of 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 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 twelve months for the purpose of determining whether the person has made sufficient progress to entitled to transfer to a less restrictive facility, to conditional release, or discharge.</p> <p>Any person committed as a sexually violent person may petition the committing court for conditional release if at least six months have elapsed since the initial commitment order was entered, 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>
Legal Status	No decisions to date.
Contact Person	Nick Howell, Department of Corrections, (217) 522-2666

Kansas

Year Enacted	1994, Kansas Statutes Annotated 59-29a
Definitions	<i>Sexually violent predators:</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.
Commitment Procedures	<p>Agency with jurisdiction over person shall inform county prosecutor regarding persons who will be released in 60 days who were convicted of sexually violent offense, or found not guilty by reason of insanity. Within 45 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 45 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 care and control 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>
Location, Number Referred, Number Committed	<p>Individuals are currently housed in the Larned State Hospital.</p> <p>As of August 1997, 100 individuals have been referred, 10 individuals are committed.</p>
Treatment and Release Provisions	<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>
Legal Status	Upheld by U.S. Supreme Court on June 23, 1997 (<i>Kansas v. Hendricks</i> , 117 st.ct. 2072 (KS 1997)).
Contact Person	Terry Gross, Assistant Attorney General, (316) 792-4354

Minnesota

Year Enacted	1939 Psychopathic Personality, Minn. Stat. § 253B.185 1994 Sexually Dangerous Persons, Minn. Stat. § 253B.02, subd. 18b(a)(3)
Definitions	<p><i>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 person conduct with respect to sexual matters and thereby dangerous to other persons, 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>"Habitual course of misconduct in sexual matters" has been interpreted in case law to be three convictions. Commitment as a psychopathic personality requires evidence of physical harm or intent to harm the victim (1993 decision).</p> <p><i>Sexually Dangerous Persons:</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>
Commitment Procedures	<p>The process for both types of commitments follows state's civil commitment law. County attorney prepares a petition, including statement by court-appointed examiner. 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 the Minnesota Sexual Psychopathic Personality Treatment Center or the Minnesota Security Hospital or other designated treatment facility.</p> <p>Following the initial commitment, a written treatment report must be filed with the court within 60 days. Second court commitment hearing, with final commitment order transferring custody of the patient to the treatment facility for an "indeterminate period of time."</p>
Location, Number Referred, Number Committed	<p>Committed individuals are housed at the Minnesota Sexual Psychopathic Treatment Center in Moose Lake and the Minnesota Security Hospital in St. Peter. As of August 1997, 196 individuals have been referred from Department of Corrections, 101 persons have been committed; an additional 16 held for evaluation on initial warrant of commitment.</p> <p>Of the 101 persons committed:</p> <ul style="list-style-type: none"> • 90 persons committed in-house, 11 placed elsewhere (prison, community placement). <p>Of the 90 committed in-house:</p> <ul style="list-style-type: none"> • 66 committed as sexually psychopathic persons • 6 committed as sexually dangerous persons • 3 committed as sexually psychopathic, mentally ill and dangerous persons • 15 committed as sexual psychopathic and sexually dangerous persons
Treatment and Release Provisions	<p>Individuals have a statutory right to be offered treatment in a mental health rather than a prison setting. Patients can petition for discharge to a 3-member special review board trained in mental illness. Commissioner of Human Services makes discharge decision, based on majority recommendation of the board.</p> <p>The Commissioner's decision can be appealed to a special appeal panel appointed by the Supreme Court. Further decisions can be appealed to the Appeals Court and the Supreme Court.</p>
Legal Status	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.
Legal Status (continued)	<p>The Minnesota Supreme Court upheld constitutionality of the psychopathic personality statute in 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>
Contact Person	Stephen Huot, Department of Corrections, (612) 642-0279 Bonnie Lee, Department of Human Services, (612) 296-6918

New Jersey

<i>Year Enacted</i>	1994, L. 1994, c. 134, § 1.
<i>Definitions</i>	<p>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.</p> <p>The definition of <i>mental illness</i> is specifically not limited to finding of "psychosis" or "active psychosis."</p>
<i>Commitment Procedures</i>	<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>
<i>Location, Number Committed</i>	Forensic Psychiatric Hospital in Trenton. As of August 1997, 55 persons were institutionalized. Offenders referred at local level, no central record of referrals available.
<i>Treatment and Release Provisions</i>	<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>
<i>Legal Status</i>	State Supreme Court upheld statute in August 1996 (<i>In the matter of D.C.</i> , 1996.NJ.351 (http://www.versuslaw.com)).
<i>Contact Person</i>	Norman Reim, Department of Human Services, (609) 292-3703

North Dakota

Year Enacted	1997; House Bill 1047
Definitions	<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.
Commitment Procedures	<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 thirty 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. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.</p>
Location, Number Referred, Number Committed	The law went into effect on August 1, 1997. Placement will be at the forensic unit of the state hospital temporarily, until a permanent facility is chosen. As of August 1997, there have been no referrals and no commitments.
Treatment and Release Provisions	<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>
Legal Status	No court decisions to date.
Contact Person	Karen Larson, Department of Human Services, (701) 328-2310 Alex Schweitzer, North Dakota State Hospital, (701) 253-3964

Washington

Year Enacted	1990, Revised Code of Washington § 71.09
Definitions	<i>Sexually violent predator</i> : A sexual offender who has been convicted of 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 offense if not confined in a secure facility.
Commitment Procedures	<p>When an offender previously convicted of a sexually violent offense is about to be released from confinement, or has committed a recent overt act since release, has expired or is about to expire, 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.</p>
Location, Number Referred, Number Committed	<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 May 1997, 182 individuals have been referred. As of August 1997, 26 individuals have been committed.</p>
Treatment and Release Provisions	<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> <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>
Legal Status	A challenge to treatment conditions at the facility (<i>Turay v. Weston</i> , No. C91-664WD (W.D. Wash. June 6, 1994)) caused the federal court to issue an injunction and appoint a special master in 1994.
Contact Person	Mark Seling or Karen Burnett, Special Commitment Center, (360) 794-2200

Wisconsin

Year Enacted	1994, Wisc. Stats. Chapter 980
Definitions	<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>
Commitment Procedures	<p>When person is within 90 days of discharge or release from a sentence, juvenile commitment, or insanity commitment, imposed for sexually violent offense. The attorney general or specified district attorneys can file a petition.</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 of Health and Family Services arranges 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>
Location, Number Referred, Number Committed	<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 of August 1997, 206 individuals have been referred for commitment, 91 have been found to be sexually violent predators.</p>
Treatment and Release Provisions	<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 6 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 and 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>

Wisconsin (continued)

Treatment and Release Provisions (continued)	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.
Legal Status	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.
Contact Person	Linda Harris, Department of Corrections, (608) 267-7909

Canada

Year Enacted	1977, R.S., c. C-34, s. 688; 1976-1977, c.53, s.14. Revised 1997; Chapter 17, Statutes of Canada, 1997.
Definitions	<i>Dangerous offender:</i> Any person convicted of a serious personal injury offense, but not yet sentenced, who constitutes a danger to the life, safety, or physical/mental well being of others.
Commitment Procedures	<p>Application for a hearing must be made after person is convicted of a serious personal injury offense but before sentencing.</p> <p>The Attorney General for the province approves the application. The hearing occurs without a jury, a right to counsel is not specifically provided for in legislation. Two psychiatrists evaluate the person, one chosen by the Crown and the other by the person. The court must hear all other evidence the court judges to be relevant including evidence of any psychologist or criminologist.</p> <p>Dangerousness is based on evidence establishing a pattern of repetitive behavior, inability to restrain behavior, demonstrates a likelihood of causing death or injury to others, displays a pattern of persistent aggressive behavior, brutal nature of the offense, or a failure to control sexual impulses.</p> <p>If found to be a dangerous offender the person is incarcerated indefinitely, in lieu of sentencing.</p>
Location, Number Committed	<p>As of June 1997, 188 people are classified as dangerous offenders. They are housed in federal institutions.</p> <p>The majority were convicted of sexual offenses.</p>
Treatment and Release Provisions	After three years of incarceration have been served, parole eligibility hearing before the National Parole Board is held every two years.
Legal Status	The 1977 version of law was upheld (<i>R. v. Lyons</i> , 1987).
Contact Person	Jim Bonta, Solicitor General's Office, (613) 991-2831