

2011 -- H 5874

LC00132

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO CRIMINAL OFFENSES -- CIVIL COMMITMENT OF SEXUALLY
VIOLENT PREDATORS

Introduced By: Representatives McNamara, Palumbo, DaSilva, Malik, and Gallison

Date Introduced: March 08, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 37.3

4 THE RHODE ISLAND CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

5 ACT

6 **11-37.3-1. Short Title.** – This chapter shall be known and may be cited as the "Rhode
7 Island Civil Commitment of Sexually Violent Predators Act of 2011."

8 **11-37.3-2. Commitment of sexually violent predators – Legislative findings.** – It is
9 hereby found and declared as follows:

10 (1) The legislature finds that there exists a small, but extremely dangerous group of
11 sexually violent predators who have a mental abnormality or personality disorder and who are
12 likely to engage in repeat acts of sexual violence if not treated for their mental abnormality or
13 personality disorder.

14 (2) The existing civil commitment procedures under Rhode Island general laws section
15 40.1-5, et seq. and amendments thereto are intended to provide short-term treatment to
16 individuals with serious mental disorders and then return them to the community. These existing
17 civil commitment procedures are inadequate to address the special needs of sexually violent
18 predators and the risks that they present to society.

1 (3) The legislature determines that a separate involuntary civil commitment process for
2 the potentially long-term control, care and treatment of sexually violent predators is necessary.

3 (4) The legislature further finds that sexually violent predators' likelihood of engaging in
4 repeat acts of predatory sexual violence is high.

5 (5) The legislature also determines that because of the nature of the mental abnormalities
6 or personality disorders from which sexually violent predators suffer and the dangers they
7 present, it is necessary to house involuntarily committed sexually violent predators in an
8 environment separate from persons involuntarily committed under Rhode Island general laws
9 section 40.1-5-1 et seq.

10 (6) The legislature further finds that the prognosis for rehabilitating sexually violent
11 predators in a prison setting is poor, the treatment needs of this population are very long term and
12 the treatment modalities for this population are very different from the traditional treatment
13 modalities for people appropriate for commitment under the treatment act for mentally ill persons
14 defined in section 40.1-5-1 et seq. and amendments thereto. Therefore, a civil commitment
15 procedure for the long-term care and treatment of the sexually violent predator is found to be
16 necessary by the legislature.

17 **11-37.3-3. Definitions.** – The following words and phrases, when used in this chapter,
18 have the following meanings:

19 (1) "Sexually violent predator" means any person who has been convicted of a sexually
20 violent offense and who has a mental abnormality or personality disorder that makes the person
21 likely to engage in repeated predatory sexually violent offenses, if not confined to a secure
22 facility.

23 (2) "Predator" means a person whose act(s) is (are) or was (were) directed at a stranger,
24 or at a person with whom a relationship has been established or promoted for the primary purpose
25 of victimization.

26 (3) "Mental abnormality" means a congenital or acquired condition affecting the
27 emotional or volitional capacity which predisposes the person to commit sexually violent offenses
28 in a degree constituting such person a menace to the health and safety of others.

29 (4) "Likely to engage in repeat acts of sexual violence" means that the person is likely to
30 engage in repeated sexual offenses if not confined to a secure facility.

31 (5) "Sexually motivated" means that one of the purposes for which the defendant
32 committed the crime was the purpose of the defendant's sexual gratification.

33 (6) "Sexually violent offense" means and includes any violation of section 11-10-1, 11-
34 37-2, 11-37-4, 11-37-6, 11-37-8, 11-37-8.1 or 11-37-8.3 or any offense in another jurisdiction

1 which is substantially the equivalent of any offense listed in this subsection and for which the
2 person is or would be required to register under 42 U.S.C. 14071.

3 (7) "Criminal offense against a victim who is a minor" means and includes any of the
4 following offenses or any offense in another jurisdiction which is substantially the equivalent of
5 the following and for which the person is or would be required to register under 42 U.S.C. 14071:

6 (i) Kidnapping or false imprisonment of a minor, in violation of section 11-26-1.4; or
7 section 11-26-1 or 11-26-2, where the victim of such offense is sixteen (16) years of age or older
8 and under the age of eighteen (18) years; or

9 (ii) Any violation of section 11-37-6, 11-37-8, 11-37-8.1 or 11-37-8.3; or a violation of
10 section 11-10-1, where the victim of such offense is under the age of eighteen (18) years; or

11 (iii) Any violation of section 11-1-10 where the underlying offense is a violation of
12 chapter 34 and the victim or person solicited to commit the offense is under the age of eighteen
13 (18) years; or

14 (iv) Any violation of subsection 11-9-1(b) or 11-9-1(c).

15 (8) "Agency with jurisdiction" means that agency which releases upon lawful order or
16 authority a person serving a sentence or term of confinement and includes the department of
17 corrections, the state department of mental health, retardation and hospitals, and the Rhode Island
18 Parole Board.

19 (9) "Person" means an individual who is a potential or actual subject of proceedings
20 under this chapter.

21 (10) "Treatment staff" means the persons, agencies or firms employed by or contracted
22 with the department of mental health, retardation and hospitals to provide treatment, supervision
23 or other services at the sexually violent predator facility.

24 (11) "Transitional release" means any halfway house, work release or other placement
25 designed to assist the person's adjustment and reintegration into the community once released
26 from the commitment.

27 (12) "Designated state law enforcement agency" shall mean the attorney general or his or
28 her designee.

29 **11-37.3-4. Notice of release of sexually violent predator by agency with jurisdiction**
30 **to attorney general and multidisciplinary team – Time – Contents– Immunity from liability**
31 **– Establishing a multidisciplinary team – Appointment of prosecutor's review committee –**
32 **Assessment of person.** – (a) When it appears that a person may meet the criteria of a sexually
33 violent predator as defined in section 11-37.3-3, the agency with jurisdiction shall give written
34 notice of such to the attorney general and the multidisciplinary team established in subsection (d),

1 ninety (90) days prior to:

2 (1) The anticipated release from total confinement of a person who has been convicted of
3 a sexually violent offense, except that in the case of person's who are returned to prison for no
4 more than ninety (90) days as a result of revocation of post release supervision, written notice
5 shall be given as soon as practicable following the person's readmission to prison;

6 (2) Release of a person who has been charged with a sexually violent offense and who
7 has been determined to be incompetent to stand trial pursuant to section 40.1-5.3-3 of the Rhode
8 Island general laws and amendments thereto.

9 (b) The agency with jurisdiction shall inform the attorney general and the
10 multidisciplinary team established in subsection (d) of the following:

11 (1) The person's name, identifying factors, anticipated future residence and offense
12 history; and

13 (2) Documentation of institutional adjustment and any treatment received.

14 (c) The agency with jurisdiction, its employees, officials, members of the
15 multidisciplinary team established in subsection (d), members of the prosecutor's review
16 committee appointed as provided in subsection (e) and individuals contracting, appointed or
17 volunteering to perform services hereunder shall be immune from liability for any good-faith
18 conduct under this section.

19 (d) The director of the department of corrections shall establish a multidisciplinary team
20 which may include individuals from other state agencies to review available records of each
21 person referred to such team pursuant to subsection (a). The team, within thirty (30) days of
22 receiving notice, shall assess whether or not the person meets the definition of a sexually violent
23 predator, as established in section 11-37.3-3 of the Rhode Island general laws and amendments
24 thereto. The team shall notify the attorney general of its assessment.

25 (e) The attorney general shall appoint a prosecutor's review committee to review the
26 records of each person referred to the attorney general pursuant to subsection (a). The
27 prosecutor's review committee shall assist the attorney general in the determination of whether or
28 not the person meets the definition of a sexually violent predator. The assessment of the
29 multidisciplinary team shall be made available to the attorney general and the prosecutor's review
30 committee.

31 **11-37.3-5. Petition – Time – Contents – Not jurisdictional.** – (a) When it appears that
32 the person presently confined may be a sexually violent predator and the prosecutor's review
33 committee appointed as provided in subsection 11-37.3-4(e) and amendments thereto, has
34 determined that the person meets the definition of a sexually violent predator, the attorney general

1 may file a petition, within seventy-five (75) days of the date the attorney general received the
2 written notice by the agency of jurisdiction as provided in subsection 11-37.3-4(a) and
3 amendments thereto, alleging that the person is a sexually violent predator and stating sufficient
4 facts to support such allegation.

5 (b) The provisions of this section are not jurisdictional, and failure to comply with such
6 provisions in no way prevents the attorney general from proceeding against a person otherwise
7 subject to the provision of 11-37.3-1 et seq., and amendments thereto.

8 **11-37.3-6. Determination of probable cause – Hearing – Evaluation – Person taken**
9 **into custody.** – (a) Upon the filing of a petition under section 11-37.3-5, the judge shall
10 determine whether probable cause exists to believe that the person named in the petition is a
11 sexually violent predator. If such determination is made, the judge shall direct that person to be
12 taken into custody.

13 (b) Within seventy-two (72) hours after a person is taken into custody pursuant to
14 subsection (a), such person shall be provided with notice of, and an opportunity to appear in
15 person at, a hearing to contest probable cause as to whether the detained person is a sexually
16 violent predator. At this hearing, the court shall:

17 (1) Verify the detainee's identity; and

18 (2) Determine whether probable cause exists to believe that the person is a sexually
19 violent predator.

20 The state may rely upon the petition and supplement the petition with additional
21 documentary evidence or live testimony if it so desires.

22 (c) At the probable cause hearing as provided in subsection (b), the detained person shall
23 have the following rights in addition to the rights previously specified:

24 (1) To be represented by counsel;

25 (2) To present evidence on such person's behalf;

26 (3) To cross-examine witnesses who testify against such person; and

27 (4) To review and copy all petitions and reports in the court file.

28 (d) If a probable cause determination is made, the court shall direct that the person be
29 transferred to an appropriate secure facility, for an evaluation as to whether the person is a
30 sexually violent predator. The evaluation shall be conducted by a person deemed to be
31 professionally qualified to conduct such an examination.

32 **11-37.3-7. Trial – Counsel and experts – Indigent person -- Jury.** – Within sixty (60)
33 days after the completion of any hearing held pursuant to section 11-37.3-6 and amendments
34 thereto, the court shall conduct a trial to determine whether the person is a sexually violent

1 predator. The trial may be continued upon the request of either party and a showing of good
2 cause, or by the court on its own motion in the due administration of justice, and when the
3 respondent will not be substantially prejudiced. At all stages of the proceedings under this
4 chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the
5 person is indigent, the court shall appoint counsel to assist such person. Whenever any person is
6 subjected to an examination under this chapter, such person may retain experts or professional
7 persons to perform an examination on such person's behalf. When the person wishes to be
8 examined by a qualified expert or professional person of such person's own choice, such
9 examiner shall be permitted to have reasonable access to the person for the purpose of such
10 examination, as well as to all relevant medical and psychological records and reports. In the case
11 of a person who is indigent, the court, upon the person's request, shall determine whether the
12 services are necessary and reasonable compensation for such services. If the court determines that
13 the services are necessary and the expert or professional person's requested compensation for
14 such services is reasonable, the court shall assist the person in obtaining an expert or professional
15 person to perform an examination or participate in the trial on the person's behalf. The court shall
16 approve payment for such services upon the filing of a certified claim for compensation supported
17 by a written statement specifying the time expended, services rendered, expenses incurred on
18 behalf of the person and compensation received in the same case or for the same services from
19 any other source. The person and the attorney general shall have the right to demand that the trial
20 be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least
21 four (4) days prior to trial. If no demand is made, the trial shall be before the court.

22 **11-37.3-8. Determination – Commitment procedure – Interagency agreements --**
23 **Mistrials.** – (a) The court or jury shall determine whether, beyond a reasonable doubt, the person
24 is a sexually violent predator. If such determination that the person is a sexually violent predator
25 is made by a jury, such determination shall be by unanimous verdict of such jury. Such
26 determination may be appealed. If the court or jury determines that the person is a sexually
27 violent predator, the person shall be committed to the custody of the director of the state
28 department of mental health, retardation and hospitals for control, care and treatment until such
29 time as the person's mental abnormality or personality disorder has so changed that the person is
30 safe to be at large. Such control, care and treatment shall be provided at a facility operated by the
31 department of mental health, retardation and hospitals. At all times, persons committed for
32 control, care and treatment by the department of mental health, retardation and hospitals pursuant
33 to this chapter shall be kept in a secure facility and such persons shall be segregated at all times
34 from any other patient under the supervision of the department of mental health, retardation and

1 hospitals and commencing July 1, 2011, such persons committed pursuant to this chapter shall be
2 kept in a facility or building separate from any other patient under the supervision of the director.
3 The department of mental health, retardation and hospitals is authorized to enter into an
4 interagency agreement with the department of corrections for the confinement of such persons.
5 Such persons who are in the confinement of the department of corrections pursuant to an
6 interagency agreement shall be housed and managed separately from offenders in the custody of
7 the department of corrections, and except for occasional instances of supervised incidental
8 contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a
9 reasonable doubt that the person is a sexually violent predator, the court shall direct the person's
10 release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure
11 facility, including, but not limited to, a county jail, until another trial is conducted. Any
12 subsequent trial following a mistrial shall be held within ninety (90) days of the previous trial,
13 unless such subsequent trial is continued as provided by the Rhode Island Rules of Civil or
14 Criminal Procedure.

15 (b) If the person charged with a sexually violent offense has been found incompetent to
16 stand trial, and is about to be released pursuant to section 40.1-5.3-3 of the Rhode Island general
17 laws, and such person's commitment is sought pursuant to subsection (a), the court shall first hear
18 evidence and determine whether the person did commit the act or acts charged. The hearing on
19 this issue must comply with all the procedures specified in this section. In addition, the rules of
20 evidence applicable in criminal cases shall apply, and all constitutional rights available to
21 defendants at criminal trials, other than the right not to be tried while incompetent, shall apply.
22 After hearing evidence on this issue, the court shall make specific findings on whether the person
23 did commit the act or acts charged, the extent to which the person's incompetence or
24 developmental disability affected the outcome of the hearing, including its effect on the person's
25 ability to consult with and assist counsel and to testify on such person's own behalf, the extent to
26 which the evidence could be reconstructed without the assistance of the person and the strength of
27 the prosecution's case. If after the conclusion of the hearing on the issue, the court finds, beyond a
28 reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final
29 order, appealable by the person, on that issue, and may proceed to consider whether the person
30 should be committed pursuant to this section.

31 **11-37.3-9. Annual examinations – Discharge by persons committed under this**
32 **chapter over the director's objection at time of annual examination -- Procedure. – Each**
33 **person committed under this chapter shall have a current examination of the person's mental**
34 **condition made once every year. The person may retain, or if the person is indigent and so**

1 requests the court may appoint a qualified professional person to examine such person, and such
2 experts or professional person shall have access to all records concerning the person. The yearly
3 report shall be provided to the court that committed the person under this chapter. The court shall
4 conduct an annual review of the status of the committed person. Nothing contained in this
5 chapter shall prohibit the person from otherwise petitioning the court for discharge at this hearing.
6 The director of the state department of mental health, retardation and hospitals shall provide the
7 committed person with an annual written notice of the person's right to petition the court for
8 release over the director's objection. The notice shall contain a waiver of rights. The director
9 shall forward the notice and waiver form to the court with the annual report. The committed
10 person shall have a right to have an attorney represent the person at the hearing. If the court at the
11 hearing determines that probable cause exists to believe that the person's mental abnormality or
12 personality disorder has so changed that the person is safe to at large and will not engage in acts
13 of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the
14 committed person shall be entitled to be present and entitled to benefit of all the constitutional
15 protections that were afforded the person at the initial commitment proceeding. The attorney
16 general shall represent the state at the hearing and shall have the opportunity to have the
17 committed person evaluated by the experts chosen by the state. The committed person shall also
18 have the right to have experts evaluate the person on the person's behalf and the court shall
19 appoint an expert if the person is indigent and requests an appointment. The burden of proof at
20 the hearing shall be upon the state to prove beyond a reasonable doubt that the committed
21 person's mental abnormality or personality disorder remains such that the person is not safe to be
22 at large and if released is likely to engage in acts of sexual violence.

23 **11-37.3-10. Petition for release -- Procedure.** – If the director of the state department of
24 mental health, retardation and hospitals determines that the person's mental abnormality or
25 personality disorder has so changed that the person is not likely to commit predatory acts of
26 sexual violence if released, the director shall authorize the person to petition the court for release.
27 The petition shall be served upon the court and the attorney general. The court, upon receipt of
28 the petition of release, shall order a hearing within thirty (30) days. The attorney general shall
29 represent the state, and shall have the right to have the petitioner examined by an expert or
30 professional person of such attorney's choice. The hearing shall be before a jury if demanded by
31 either the petitioner or the attorney general. The burden of proof shall be upon the attorney
32 general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality
33 disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to
34 commit predatory acts of sexual violence.

1 **11-37.3-11. Bail.** – Any person for whom a petition pursuant to this chapter has been
2 filed and is in the secure confinement of the state shall not be eligible for bail, bond, community
3 confinement or any other measures releasing the person from the physical protective custody of
4 the state notwithstanding the provisions of section 11-37.3-1 et seq., and amendments thereto.

5 **11-37.2-12. Jurisdiction.** – The provisions of section 11-37.3-1 et seq., and amendments
6 thereto are not jurisdictional, and failure to comply with any jurisdictional provisions in no way
7 prevents the attorney general from proceeding against a person otherwise subject to the
8 provisions of section 11-37.3 et seq., and amendments thereto.

9 **11-37.3-13. Confidential or privileged information and records.** – In order to protect
10 the public, relevant information and records which are otherwise confidential or privileged shall
11 be released to the agency with jurisdiction or the attorney general for the purpose of meeting any
12 pertinent notice requirement in an effort to determine whether a person is or continues to be a
13 sexually violent predator.

14 **11-37.3-14. Court records – Sealed and opened by court order.** – Any psychological
15 reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical
16 records or victim impact statements which have been submitted to the court or admitted into
17 evidence under this chapter shall be part of the record but shall be sealed and opened only on
18 order of the court.

19 SECTION 2. This act shall take effect upon passage and shall apply to persons convicted
20 of the criminal offenses enumerated herein after July 1, 2011.

=====
LC00132
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINAL OFFENSES -- CIVIL COMMITMENT OF SEXUALLY
VIOLENT PREDATORS

1 This act would provide a procedure for the civil commitment of sexually violent
2 predators to the sate department of mental health, retardation and hospitals beyond their
3 respective criminal sentences or dispositions.

4 This act would take effect upon passage and would apply to persons convicted of the
5 criminal offenses enumerated herein after July 1, 2011.

=====
LC00132

=====