

Angelo, Hammond, Redfern

Sponsored By  
HF 2286

SSB 3141  
Judiciary

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the civil commitment of sexually violent  
2 predators.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 229A.1, unnumbered paragraph 2, Code  
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for  
4 rehabilitating sexually violent predators in a prison setting  
5 is poor, because the treatment needs of this population are  
6 very long-term, and the treatment modalities for this  
7 population are very different from the traditional treatment  
8 modalities available in a prison setting or for persons  
9 appropriate for commitment under chapter 229. Therefore, the  
10 general assembly finds that a civil commitment procedure for  
11 the long-term care and treatment of the sexually violent  
12 predator is necessary. The procedures regarding sexually  
13 violent predators should reflect legitimate public safety  
14 concerns, while providing treatment services designed to  
15 benefit sexually violent predators who are civilly committed.  
16 The procedures should also reflect the need to protect the  
17 public, to respect the needs of the victims of sexually  
18 violent offenses, and to encourage full meaningful  
19 participation of sexually violent predators in treatment  
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding  
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional  
24 discharge from the sexually violent predator program. A  
25 person released from an appropriate secure facility in a  
26 transitional release program or released with or without  
27 supervision is not considered to be discharged.

28 NEW SUBSECTION. 2B. "Dual commitment" means simultaneous  
29 commitment pursuant to this chapter, and chapter 125, 229, or  
30 812, if the commitments are not inconsistent.

31 NEW SUBSECTION. 6A. "Safekeeper" means a person who is  
32 confined in an appropriate secure facility pursuant to this  
33 chapter but who is not subject to an order of commitment  
34 pursuant to this chapter.

35 NEW SUBSECTION. 10. "Transitional release" means a

1 conditional release from a secure facility operated by the  
2 department of human services with the conditions of such  
3 release set by the court or the department of human services.

4 Sec. 3. Section 229A.2, subsection 5, Code 2001, is  
5 amended to read as follows:

6 5. "Predatory" means acts directed toward a person with  
7 whom a-relationship contact or interaction has been  
8 established or promoted for the primary purpose of  
9 victimization making the person the object or victim of a  
10 sexually violent offense.

11 Sec. 4. Section 229A.3, subsection 1, Code 2001, is  
12 amended to read as follows:

13 1. When it appears that a person who is confined for any  
14 public offense or pursuant to any court order or judgment may  
15 meet the definition of a sexually violent predator, the agency  
16 with jurisdiction shall give written notice to the attorney  
17 general and the multidisciplinary team established in  
18 subsection 4, no later than ninety days prior to any of the  
19 following events:

20 a. The anticipated discharge or release of a person who  
21 has been convicted of a sexually violent offense from total  
22 confinement, except that in the case of a person who is  
23 returned to prison for no more than ninety days as a result of  
24 revocation of parole, written notice shall be given as soon as  
25 practicable following the person's readmission to prison.

26 b. The discharge or release of a person who has been  
27 charged with a sexually violent offense and who has been  
28 determined to be incompetent to stand trial pursuant to  
29 chapter 812.

30 c. The discharge or release of a person who has been found  
31 not guilty by reason of insanity of a sexually violent  
32 offense.

33 Sec. 5. Section 229A.4, subsection 1, Code 2001, is  
34 amended to read as follows:

35 1. If it appears that a person presently confined for any

1 public offense or pursuant to any court order or judgment may  
2 be a sexually violent predator and the prosecutor's review  
3 committee has determined that the person meets the definition  
4 of a sexually violent predator, the attorney general may file  
5 a petition alleging that the person is a sexually violent  
6 predator and stating sufficient facts ~~to-support-such-an~~  
7 allegation in a supporting statement.

8 Sec. 6. Section 229A.4, subsection 2, unnumbered paragraph  
9 1, Code 2001, is amended to read as follows:

10 A prosecuting attorney of the county in which the person  
11 was convicted or charged, or the attorney general if requested  
12 by the prosecuting attorney, may file a petition alleging that  
13 a person is a sexually violent predator and stating sufficient  
14 facts ~~to-support-such-an-allegation~~ in a supporting statement,  
15 if it appears that a person who has committed a recent overt  
16 act meets any of the following criteria:

17 Sec. 7. Section 229A.4, subsection 2, paragraph a, Code  
18 2001, is amended to read as follows:

19 a. The person was convicted of a sexually violent offense  
20 and has been discharged or released after the completion of  
21 the sentence imposed for the offense.

22 Sec. 8. Section 229A.5, subsection 1, Code 2001, is  
23 amended to read as follows:

24 1. INITIAL REVIEW. Upon filing of a petition under  
25 section 229A.4, the court shall ~~make-a-preliminary~~  
26 ~~determination-as-to-whether-probable-cause-exists-to-believe~~  
27 ~~that-the-person-named-in-the-petition-is-a-sexually-violent~~  
28 predator conduct an initial review. ~~Upon-a-preliminary~~  
29 ~~finding-of-probable-cause, the court shall direct that the~~  
30 ~~person-named-in-the-petition-be-taken-into-custody-and-that~~  
31 ~~the-person-be-served-with-a-copy-of-the-petition-and-any~~  
32 ~~supporting-documentation-and-notice-of-the-procedures-required~~  
33 ~~by-this-chapter.--If-the-person-is-in-custody-at-the-time-of~~  
34 ~~the-filing-of-the-petition, the court shall determine whether~~  
35 ~~a-transfer-of-the-person-to-an-appropriate-secure-facility-is~~

1 ~~appropriate-pending-the-outcome-of-the-proceedings-or-whether~~  
 2 ~~the-custody-order-should-be-delayed-until-the-date-of-release~~  
 3 ~~of-the-person.~~ In determining whether facts exist which would  
 4 lead a reasonable person to believe the person named in the  
 5 petition is a sexually violent predator, the court may rely  
 6 upon the petition and the supporting statement filed by the  
 7 state. The state may amend the petition and supporting  
 8 statement at any time. The Iowa rules of evidence do not  
 9 apply to an initial review, and no hearing shall be required.

10 The purpose of the initial review is to determine the  
 11 following:

- 12 a. The respondent's identity.
- 13 b. Whether competent evidence presented in the petition  
 14 and accompanying supporting statement present sufficient facts  
 15 to lead a reasonable person to believe the respondent is a  
 16 sexually violent predator.

17 Sec. 9. Section 229A.5, subsections 2, 3, 4, and 5, Code  
 18 2001, are amended by striking the subsections and inserting in  
 19 lieu thereof the following:

20 2. INITIAL REVIEW FINDINGS. Upon a finding that facts  
 21 exist which would lead a reasonable person to believe the  
 22 person named in the petition is a sexually violent predator,  
 23 the court shall direct that the person named in the petition  
 24 be detained in an appropriate secure facility and that the  
 25 person be served with a copy of the petition and any  
 26 supporting statement and notice of the procedures required by  
 27 this chapter. If the safekeeper is in custody at the time of  
 28 the filing of the petition, the court shall determine whether  
 29 a transfer of the safekeeper to an appropriate secure facility  
 30 is appropriate pending the outcome of the proceedings or  
 31 whether the custody order should be delayed until the date of  
 32 release of the person. The court shall also do all of the  
 33 following:

- 34 a. Order an evaluation to determine whether the safekeeper  
 35 is a sexually violent predator. The evaluation shall be

1 conducted by a person deemed to be professionally qualified to  
2 conduct such an examination.

3 b. Set a trial within ninety days of the filing of the  
4 petition.

5 c. Appoint an attorney to represent the safekeeper if  
6 indigency is determined pursuant to section 815.9 as provided  
7 in section 229A.6.

8 3. OBJECTION TO FINDING AND HEARING.

9 a. The safekeeper may move to object to the finding of the  
10 court in subsection 2 within seventy-two hours of notification  
11 of the attorney for the safekeeper, or if an attorney has not  
12 been retained or appointed, within seventy-two hours of the  
13 court's finding. The attorney for the safekeeper shall have  
14 access to all petitions and reports in the possession of the  
15 court. The following objections may be raised regarding the  
16 initial review findings:

17 (1) The person named in the petition is not the  
18 safekeeper.

19 (2) The person alleged to have committed the sexually  
20 violent offenses in the petition is not the safekeeper.

21 (3) Competent evidence was not presented to show that  
22 sufficient facts exist which would lead a reasonable person to  
23 believe that the safekeeper is a sexually violent predator.

24 b. If the safekeeper objects to the initial review  
25 findings and requests a hearing, the safekeeper may call  
26 witnesses at the safekeeper's expense, and the state may call  
27 witnesses at state expense, including the safekeeper, to  
28 address the issues of the objection. The safekeeper and the  
29 state may cross-examine witnesses who testify at the hearing,  
30 but a party shall not compel the other party to call  
31 witnesses.

32 c. The rules of evidence do not apply to an initial review  
33 hearing.

34 d. The burden of proof shall be on the safekeeper to  
35 demonstrate that facts do not exist to support a finding which

1 would lead a reasonable person to believe the safekeeper is a  
2 sexually violent predator.

3 e. Within seventy-two hours of the hearing, the court  
4 shall issue its written findings as to whether sufficient  
5 facts exist to support a finding which would lead a reasonable  
6 person to believe the safekeeper is a sexually violent  
7 predator. The court must make a specific written finding as  
8 to whether sufficient facts exist or do not exist. If the  
9 court fails to enter its written findings within seventy-two  
10 hours of the hearing, either party may petition the supreme  
11 court to order the district court to issue its findings. If  
12 sufficient facts exist, the case shall proceed to trial.  
13 However, if sufficient facts do not exist, the court shall  
14 notify the parties immediately after issuing the ruling and  
15 permit the state twenty-four hours to amend the petition and  
16 supporting statement with additional facts to support the  
17 filing of the petition.

18 f. The procedures for the hearing on the amended petition  
19 shall be the same as provided in this section, except the  
20 court shall issue its findings within twenty-four hours of the  
21 hearing. If after the hearing on the amended petition the  
22 court finds that sufficient facts still do not exist or that  
23 the state did not allege additional facts to support its  
24 amended petition, the court shall enter a final order of  
25 dismissal unless an emergency appeal is filed by the state.

26 g. The state may make an immediate emergency appeal to the  
27 supreme court, based upon whether sufficient facts exist to  
28 support the petition or amended petition. The appeal shall be  
29 de novo.

30 (1) If the supreme court finds that sufficient facts exist  
31 to support the petition or amended petition, the case shall be  
32 remanded to the district court for trial.

33 (2) If the supreme court finds that sufficient facts do  
34 not exist to support the petition or amended petition, the  
35 case shall be remanded to the district court for a final order

1 of dismissal.

2 h. The safekeeper shall remain confined until the petition  
3 is dismissed by the state or the court enters a final order of  
4 dismissal.

5 i. If the petition is dismissed, the safekeeper shall be  
6 released but shall comply with any requirements to register as  
7 a sex offender as provided in chapter 692A.

8 j. A finding in an initial review hearing is not a final  
9 judgment.

10 k. The safekeeper may request a continuance of a hearing  
11 under this section for good cause shown. Any continuance  
12 granted does not necessarily continue the trial date.

13 l. The safekeeper may raise additional objections in other  
14 pretrial motions as provided in the Iowa rules of civil  
15 procedure. Failure to object to the findings of an initial  
16 review pursuant to this section does not constitute a waiver  
17 of those objections.

18 Sec. 10. Section 229A.5B, Code Supplement 2001, is amended  
19 to read as follows:

20 229A.5B ESCAPE FROM CUSTODY.

21 1. A respondent person who is in-custody detained pursuant  
22 to section 229A.5 or is subject to an order of civil  
23 commitment under this chapter shall remain in custody unless  
24 released by court order or discharged under section 229A.8 or  
25 229A.10. A person who has been placed in a transitional  
26 release program or who is under release with or without  
27 supervision is considered to be in custody. A respondent  
28 person in custody under this chapter shall not do any of the  
29 following:

30 a. Leave or attempt to leave a facility without the  
31 accompaniment of authorized personnel or leave or attempt to  
32 leave a facility without authorization.

33 b. Knowingly and voluntarily be absent from a place where  
34 the respondent person is required to be present.

35 c. Leave or attempt to leave the custody of personnel

1 transporting or guarding the respondent person while the  
2 respondent person is away from a facility.

3 2. A respondent person who violates subsection 1 commits a  
4 simple misdemeanor or may be subject to punishment for  
5 contempt. ~~If the respondent pleads guilty to, or is convicted~~  
6 ~~of an offense under this section, or is found in contempt, or~~  
7 ~~both and is sentenced to a term of confinement, the civil~~  
8 ~~commitment proceedings or treatment process may be stayed by~~  
9 ~~court order until the term of confinement is served by the~~  
10 ~~respondent.~~

11 3. If a respondent person commits a violation of  
12 subsection 1 and remains unconfined, the attorney general or  
13 the chief law enforcement officer of the political subdivision  
14 where the violation occurs may make a public announcement that  
15 the respondent person is unconfined and may provide relevant  
16 information about the respondent person to the community. The  
17 attorney general may also notify a victim or the family of a  
18 victim of the respondent person that the respondent person is  
19 unconfined.

20 4. This section shall not be construed to prohibit the use  
21 of ~~the interstate compact on mental health as provided in~~  
22 ~~chapter 22~~ other lawful means for the return of the person.

23 Sec. 11. NEW SECTION. 229A.5C CRIMINAL OFFENSES  
24 COMMITTED WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

25 1. If a person who is detained pursuant to section 229A.5  
26 or who is subject to an order of civil commitment under this  
27 chapter commits a public offense, the civil commitment  
28 proceedings or treatment process shall be suspended until the  
29 criminal proceedings, including any term of confinement, are  
30 completed. The person shall also not be eligible for bail  
31 pursuant to section 811.1.

32 2. Upon the filing of a complaint, indictment, or  
33 information, the person shall be transferred to the county  
34 jail in the county where the public offense occurred until the  
35 criminal proceedings have been completed. If the person is

1 sentenced to a term of confinement in a county jail, the  
2 person shall serve the sentence at the county jail. If the  
3 person is sentenced to the custody of the director of the  
4 department of corrections, the person shall serve the sentence  
5 at a correctional institution.

6 3. A person shall not be released from jail or paroled or  
7 released to a facility or program located outside the county  
8 jail or correctional institution other than to a secure  
9 facility operated by the department of human services.

10 4. A person who committed a public offense while in a  
11 transitional release program or on release with or without  
12 supervision may be returned to a secure facility operated by  
13 the department of human services upon completion of any term  
14 of confinement that resulted from the commission of the public  
15 offense.

16 5. If the civil commitment proceedings for a person are  
17 suspended due to the commission of a public offense by the  
18 person, the ninety-day trial demand lapses. Upon completion  
19 of any term of confinement that resulted from the commission  
20 of the public offense, a new ninety-day trial demand  
21 automatically begins.

22 Sec. 12. NEW SECTION. 229A.5D MEDICAL TREATMENT.

23 A safekeeper is entitled to necessary medical treatment.

24 Sec. 13. Section 229A.6, subsection 2, Code 2001, is  
25 amended to read as follows:

26 2. If a respondent is not indigent and is subjected to an  
27 examination under this chapter, the respondent may retain  
28 experts or professional persons to perform an independent  
29 examination on the respondent's behalf. ~~If the respondent~~  
30 ~~wishes to be examined by a qualified expert or professional~~  
31 ~~person of the respondent's own choice, the examiner of the~~  
32 ~~respondent's choice shall be given reasonable access to the~~  
33 ~~respondent for the purpose of the examination, as well as~~  
34 ~~access to all relevant medical and psychological records and~~  
35 ~~reports~~ If the respondent retains an expert or professional

1 person, the respondent shall notify the state that an  
2 examination is being performed while in custody.

3 3. If the respondent is indigent, the court, upon the  
4 respondent's request, shall determine whether the services are  
5 necessary and the reasonable compensation for the services.  
6 If the court determines that the services are necessary and  
7 the requested compensation for the services is reasonable, the  
8 court shall assist the respondent in obtaining an expert or  
9 professional person to perform an examination or participate  
10 in the trial on the respondent's behalf. The court shall  
11 approve payment for such services upon the filing of a  
12 certified claim for compensation supported by a written  
13 statement specifying the time expended, services rendered,  
14 expenses incurred on behalf of the respondent, and  
15 compensation received in the same case or for the same  
16 services from any other source. However, the respondent shall  
17 reimburse the state for the expenses and compensation of the  
18 expert or professional as provided in section 815.9.

19 4. The expert or professional shall be given reasonable  
20 access to the respondent for the purpose of the examination,  
21 as well as access to all relevant medical and psychological  
22 records and reports. An attorney for the state or the  
23 respondent shall not be present during any examination of the  
24 respondent while the respondent is in custody.

25 Sec. 14. NEW SECTION. 229A.6A TRANSPORT ORDERS.

26 1. A person who has been detained prior to trial pursuant  
27 to section 229A.5 or who has been civilly committed may be  
28 transported for the following purposes:

29 a. To trial and any other court proceedings if the court  
30 has authorized a transport order. A transport order may only  
31 be requested by the court, the person's attorney, or the  
32 attorney general. Transportation shall be provided by the  
33 sheriff of the county in which the action has been brought,  
34 unless the court specifies otherwise or the parties agree to a  
35 different transportation arrangement. If a transport order is

1 not authorized, the person may appear at any court proceedings  
2 other than trial by telephone or electronic means.

3 b. To a medical facility for medical treatment, if  
4 necessary medical treatment is not available at the facility  
5 where the person is confined. A transport order is not  
6 required to transport the person for medical treatment.  
7 However, the person is not entitled to choose the medical  
8 facility where treatment is to be obtained or the medical  
9 personnel to provide the treatment. Transportation shall be  
10 provided by the sheriff of the county in which the person is  
11 confined.

12 c. To a medical, psychological, or psychiatric evaluation.  
13 A person shall not be transported to another facility for  
14 evaluation without a court order. When a transportation order  
15 is requested under this paragraph, notice must be provided to  
16 the opposing party, and the opposing party must be given a  
17 reasonable amount of time to object to the issuance of such an  
18 order. The cost of the transportation shall be paid by the  
19 party who requests the order.

20 d. To a facility for placement in a transitional release  
21 program or for release with or without supervision. A  
22 transport order is not required under this paragraph.  
23 Transportation shall be provided by the department of human  
24 services.

25 2. This section shall not be construed to grant a person  
26 the right to personally appear at all court proceedings under  
27 this chapter.

28 Sec. 15. Section 229A.7, subsection 2, Code 2001, is  
29 amended to read as follows:

30 ~~2. Within-ninety-days-after-either-the-entry-of-the-order~~  
31 ~~waiving-the-probable-cause-hearing-or-completion-of-the~~  
32 ~~probable-cause-hearing-held-under-section-229A.5, the court~~  
33 ~~shall-conduct-a-trial-to-determine-whether-the-respondent-is-a~~  
34 ~~sexually-violent-predator.~~ The respondent or the attorney for  
35 the respondent may waive the ninety-day trial requirement as

1 provided in section 229A.5; however, the respondent or the  
 2 attorney for the respondent may reassert a demand and the  
 3 trial shall be held within ninety days from the date of filing  
 4 the demand with the clerk of court. The trial may be  
 5 continued upon the request of either party and a showing of  
 6 good cause, or by the court on its own motion in the due  
 7 administration of justice, and when the respondent will not be  
 8 substantially prejudiced. In determining what constitutes  
 9 good cause, the court shall consider the length of the  
 10 pretrial detention of the respondent.

11 2A. The respondent, the attorney general, or the judge  
 12 shall have the right to demand that the trial be before a  
 13 jury. Such demand for the trial to be before a jury shall be  
 14 filed, in writing, at least ten days prior to trial. The  
 15 ~~number-and-selection-of-jurors-shall-be-determined-as-provided~~  
 16 ~~in-chapter-607A-~~ If no demand is made, the trial shall be  
 17 before the court. Except as otherwise provided, the Iowa  
 18 rules of evidence and the Iowa rules of civil procedure shall  
 19 apply to all civil commitment proceedings initiated pursuant  
 20 to this chapter.

21 Sec. 16. Section 229A.7, Code 2001, is amended by adding  
 22 the following new subsections:

23 NEW SUBSECTION. 2B. Evidence regarding prior sexually  
 24 violent offenses committed by the respondent, whether charges  
 25 were filed or not filed, including the facts and circumstances  
 26 of the prior offenses, is relevant and probative of a risk to  
 27 reoffend, and of a mental abnormality, and shall be admitted  
 28 into evidence at trial. The evidence may be presented in  
 29 document form, including but not limited to initial review  
 30 transcripts, trial transcripts, probation and sentencing  
 31 reports, and evaluations by a mental health expert. Any Iowa  
 32 rule of evidence in contravention of this subsection is void  
 33 when applied to a civil commitment proceeding under this  
 34 chapter.

35 NEW SUBSECTION. 2C. Testimony by the victim of a prior

1 sexually violent offense committed by the respondent, or by  
2 witnesses to prior sexually violent offenses committed by the  
3 respondent, whether criminal charges were filed or not filed,  
4 is relevant and probative of a risk to reoffend and of a  
5 mental abnormality, even if the respondent did not admit to  
6 the conduct of the prior offense, and is admissible at trial.  
7 Testimonial evidence may be presented by telephone or  
8 electronic means, by videotape, or by prior sworn testimony.  
9 Evidence of a victim's past sexual behavior is not admissible.  
10 Any Iowa rule of evidence in contravention of this subsection  
11 is void when applied to a civil commitment proceeding under  
12 this chapter.

13 Sec. 17. Section 229A.7, subsections 3, 4, and 5, Code  
14 2001, are amended to read as follows:

15 3. At trial, the court or jury shall determine whether,  
16 beyond a reasonable doubt, the respondent is a sexually  
17 violent predator and there shall be no presumption to commit  
18 or not to commit. ~~If the determination-that-the-respondent-is~~  
19 ~~a-sexually-violent-predator-is-made-by-a-jury,-the~~  
20 ~~determination~~ case is before a jury, the verdict shall be by  
21 unanimous verdict-of-such-jury that the respondent is a  
22 sexually violent predator.

23 If the court or jury determines that the respondent is a  
24 sexually violent predator, the respondent shall be committed  
25 to the custody of the director of the department of human  
26 services for control, care, and treatment until such time as  
27 the person's mental abnormality has so changed that the person  
28 is safe to be ~~at-large~~ placed in a transitional release  
29 program or discharged. The determination may be appealed.

30 4. The control, care, and treatment of a person determined  
31 to be a sexually violent predator shall be provided at a  
32 facility operated by the department of human services. At all  
33 times prior to placement in a transitional release program or  
34 release with or without supervision, persons committed for  
35 control, care, and treatment by the department of human

1 services pursuant to this chapter shall be kept in a secure  
 2 facility and those patients shall be segregated at all times  
 3 from any other patient under the supervision of the department  
 4 of human services. A person committed pursuant to this  
 5 chapter to the custody of the department of human services may  
 6 be kept in a facility or building separate from any other  
 7 patient under the supervision of the department of human  
 8 services. The department of human services may enter into a  
 9 chapter 28E agreement with the department of corrections or  
 10 other appropriate agency in this state or another state for  
 11 the confinement of patients who have been determined to be  
 12 sexually violent predators. Patients who are in the  
 13 confinement custody of the director of the department of  
 14 corrections pursuant to a chapter 28E agreement and who have  
 15 not been placed in a transitional release program or released  
 16 with or without supervision shall be housed and managed  
 17 separately from criminal offenders in the custody of the  
 18 director of the department of corrections, and except for  
 19 occasional instances of supervised incidental contact, shall  
 20 be segregated from those offenders.

21 5. If the court makes the determination or the jury is-not  
 22 satisfied-beyond-a-reasonable-doubt determines by a unanimous  
 23 verdict that the respondent is not a sexually violent  
 24 predator, the court shall direct the respondent's release.  
 25 Upon release, the respondent shall comply with any  
 26 requirements to register as a sex offender as provided in  
 27 chapter 692A. Upon a mistrial, the court shall direct that  
 28 the respondent be held at an appropriate secure facility until  
 29 another trial is conducted. Any subsequent trial following a  
 30 mistrial shall be held within ninety days of the previous  
 31 trial, unless such subsequent trial is continued or the ninety  
 32 days are waived as provided in subsection 2.

33 Sec. 18. NEW SECTION. 229A.7A DUAL COMMITMENT.

34 1. Civil commitment proceedings and control, care, and  
 35 treatment pursuant to this chapter shall have priority for the

1 purpose of treatment over commitments pursuant to chapter 125,  
2 229, or 812.

3 2. Commitment proceedings pursuant to chapter 125, 229, or  
4 812 may be initiated against a person who is detained pursuant  
5 to section 229A.5 or subject to an order of civil commitment  
6 under this chapter. Commitment proceedings pursuant to  
7 chapter 125, 229, or 812 may be initiated at any time after  
8 the filing of a petition pursuant to section 229A.4, including  
9 during the trial, during transitional release, or release with  
10 or without supervision.

11 3. If a person is subject to a dual commitment, the person  
12 may receive appropriate services pursuant to chapter 125, 229,  
13 or 812 as long as the services are consistent with the  
14 purposes of this chapter.

15 4. The director of human services shall coordinate the  
16 payment of costs for control, care, and treatment of a person  
17 under a dual commitment. If services pursuant to chapter 125,  
18 229, or 812 have been provided to a person who is under a dual  
19 commitment, the services shall be paid for as provided in that  
20 chapter.

21 5. An attorney appointed to represent a person under this  
22 chapter shall not represent the person in a dual commitment  
23 proceeding pursuant to chapter 125, 229, or 812.

24 6. For purposes of this chapter, venue for a dual  
25 commitment proceeding pursuant to chapter 125, 229, or 812  
26 shall be in the county where the petition pursuant to section  
27 229A.4 is filed.

28 7. No other action may be joined with a dual commitment  
29 proceeding.

30 Sec. 19. Section 229A.8, Code 2001, is amended to read as  
31 follows:

32 229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR  
33 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

34 1. Upon civil commitment of a person pursuant to this  
35 chapter, a rebuttable presumption exists that the commitment

1 should continue. The presumption may be rebutted when facts  
2 exist to warrant a hearing to determine whether a committed  
3 person no longer suffers from a mental abnormality which makes  
4 the person likely to engage in predatory acts constituting  
5 sexually violent offenses if not confined in a secure  
6 facility, or the committed person is suitable for placement in  
7 a transitional release program.

8 1- 2. Each A person committed under this chapter shall  
9 have a current examination of the person's mental abnormality  
10 made once every year. The person may retain, or if the person  
11 is indigent and so requests, the court may appoint a qualified  
12 expert or professional person to examine such person, and such  
13 expert or professional person shall be given access to all  
14 records concerning the person.

15 2- 3. The annual report shall be provided to the court  
16 that committed the person under this chapter. The court shall  
17 conduct an annual review and probable-cause, if warranted, set  
18 a final hearing on the status of the committed person. The  
19 annual review may be based only on written records.

20 3- 4. Nothing contained in this chapter shall prohibit the  
21 person from otherwise petitioning the court for discharge or  
22 placement in a transitional release program at the probable  
23 cause-hearing annual review. The director of human services  
24 shall provide the committed person with an annual written  
25 notice of the person's right to petition the court for  
26 discharge or placement in a transitional release program over  
27 the director's objection. The notice shall contain a waiver  
28 of rights. The director shall forward the notice and waiver  
29 form to the court with the annual report.

30 4- 5. The following provisions apply to an annual review:

31 a. The committed person shall have a right to have an  
32 attorney represent the person ~~at-the-probable-cause-hearing~~  
33 but the person is not entitled to be present at the hearing,  
34 if a hearing is held. If-the-court-at-the-hearing-determines  
35 that-probable-cause-exists-to-believe-that-the-person's

1 b. The Iowa rules of evidence do not apply.

2 c. The committed person may waive an annual review or may  
3 stipulate that the commitment should continue for another  
4 year.

5 d. The court shall review the annual report of the state  
6 and the report of any qualified expert or professional person  
7 retained by or appointed for the committed person and may  
8 receive arguments from the attorney general and the attorney  
9 for the committed person if either requests a hearing. The  
10 request for a hearing must be in writing, within ten days of  
11 the filing of the notice of annual review, or on motion by the  
12 court. Such a hearing may be conducted in writing without any  
13 attorneys present.

14 e. The burden is on the committed person to show by a  
15 preponderance of the evidence that there is competent evidence  
16 which would lead a reasonable person to believe a final  
17 hearing should be held to determine either of the following:

18 (1) The mental abnormality of the committed person has so  
19 changed that the person is ~~safe-to-be-at-large-and-will~~ not  
20 likely to engage in predatory acts or constituting sexually  
21 violent offenses if discharged, ~~then-the-court-shall-set-a~~  
22 final-hearing-on-the-issue.

23 (2) The committed person is suitable for placement in a  
24 transitional release program pursuant to section 229A.8A.

25 If the committed person shows by a preponderance of the  
26 evidence that a final hearing should be held on either  
27 determination under subparagraph (1) or (2), or both, the  
28 court shall set a final hearing within sixty days of the  
29 determination that a final hearing be held.

30 f. If at the time for the annual review the committed  
31 person has filed a petition for discharge or placement in a  
32 transitional release program with authorization from the  
33 director of human services, the court shall set a final  
34 hearing within ninety days of the authorization by the  
35 director, and no annual review shall be held.

1 g. If the committed person has not filed a petition, or  
2 has filed a petition for discharge or for placement in a  
3 transitional release program without authorization from the  
4 director of human services, the court shall first conduct the  
5 annual review as provided in this subsection.

6 h. Any petition can summarily be dismissed by the court as  
7 provided in section 229A.11.

8 i. If at the time of the annual review the committed  
9 person is in a secure facility and not in the transitional  
10 release program, the state shall have the right to demand that  
11 both determinations in paragraph "c" be submitted to the court  
12 or jury.

13 5. At-the-final-hearing, the The following provisions  
14 shall apply to a final hearing:

15 a. The committed person shall be entitled to be-present an  
16 attorney and is entitled to the benefit of all constitutional  
17 protections that were afforded the person at the original  
18 commitment proceeding. The-attorney-general-shall-represent  
19 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have  
20 the-committed-person-evaluated-by-experts-chosen-by-the-state  
21 committed person shall be entitled to a jury trial, if such a  
22 demand is made in writing and filed with the clerk of court at  
23 least ten days prior to the final hearing.

24 b. The committed person shall also have the right to have  
25 experts evaluate the person on the person's behalf. The court  
26 shall appoint an expert if the person is indigent and requests  
27 an appointment.

28 c. The attorney general shall represent the state and  
29 shall have a right to demand a jury trial. The jury demand  
30 shall be filed, in writing, at least ten days prior to the  
31 final hearing.

32 d. The burden of proof at the final hearing shall be upon  
33 the state to prove beyond a reasonable doubt that-the either  
34 of the following:

35 (1) The committed person's mental abnormality or

1 ~~personality-disorder~~ remains such that the person ~~is-not-safe~~  
2 ~~to-be-at-large-and-if-discharged~~ is likely to engage in acts  
3 ~~of-sexual-violence~~ predatory acts that constitute sexually  
4 violent offenses if discharged.

5 (2) The committed person is not suitable for placement in  
6 a transitional release program pursuant to section 229A.8A.

7 e. If the case is submitted to a jury, the verdict of the  
8 jury must be unanimous as to whether to discharge the person  
9 or to place the person in a transitional program.

10 f. If a mistrial is declared, the confinement or placement  
11 status of the committed person shall not change. After a  
12 mistrial has been declared, a new trial must be held within  
13 ninety days of the mistrial.

14 6. The state and the committed person may stipulate to a  
15 transfer to a transitional release program if the court  
16 approves the stipulation.

17 Sec. 20. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

18 1. The department of human services is authorized to  
19 establish a transitional release program and provide control,  
20 care, and treatment, and supervision of committed persons  
21 placed in such a program.

22 2. A committed person is suitable for placement in the  
23 transitional release program if all of the following apply:

24 a. The committed person's mental abnormality is no longer  
25 such that the person is a high risk to reoffend.

26 b. The committed person has achieved and demonstrated  
27 significant insights into the person's sex offending cycle.

28 c. The committed person has accepted responsibility for  
29 past behavior and understands the impact sexually violent  
30 crimes have upon a victim.

31 d. A detailed relapse prevention plan has been developed  
32 and accepted which is appropriate for the committed person's  
33 mental abnormality and sex offending history.

34 e. No major discipline reports have been issued for the  
35 committed person for a period of one year.

1 f. The committed person is not likely to escape or attempt  
2 to escape custody pursuant to section 229A.5B.

3 g. The committed person is not likely to commit acts  
4 constituting sexually violent offenses while in the program.

5 h. The placement is in the best interest of the committed  
6 person.

7 i. The committed person has demonstrated a willingness to  
8 agree to and abide by all rules of the program.

9 3. If the committed person does not agree to the  
10 conditions of release, the person is not eligible for the  
11 transitional release program.

12 4. For purposes of registering as a sex offender under  
13 chapter 692A, a person placed in the transitional release  
14 program shall be classified a "high-risk" sex offender and  
15 public notification shall be as provided in section 692A.13A,  
16 subsection 2. A committed person who refuses to register as a  
17 sex offender is not eligible for placement in a transitional  
18 release program.

19 5. Committed persons in the transitional release program  
20 are not necessarily required to be segregated from other  
21 persons.

22 6. The department of human services shall be responsible  
23 for establishing and implementing the rules and directives  
24 regarding the location of the transitional release program,  
25 staffing needs, restrictions on confinement and the movement  
26 of committed persons, and for assessing the progress of  
27 committed persons in the program. The court may also impose  
28 conditions on a committed person placed in the program.

29 7. The department of human services may contract with  
30 other government or private agencies, including the department  
31 of corrections, to implement and administer the transitional  
32 release program.

33 Sec. 21. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL  
34 RELEASE.

35 1. The treatment staff in a transitional release program

1 may remove the committed person from the program for a  
2 violation of any rule or directive, and return the person to a  
3 secure facility. The treatment staff may request the district  
4 court to issue an emergency ex parte order directing any law  
5 enforcement officer to take the committed person into custody  
6 so that the person can be returned to a secure facility. The  
7 request for an ex parte order may be made orally or by  
8 telephone, but the original written request or a facsimile  
9 copy of the original request shall be filed with the clerk of  
10 court no later than four-thirty p.m. on the next business day  
11 the office of the clerk of court is open.

12 2. If a committed person absconds from a transitional  
13 release program in violation of the rules or directives, a  
14 presumption arises that the person poses a risk to public  
15 safety. The department of human services, in cooperation with  
16 local law enforcement agencies, may make a public announcement  
17 about the absconder. The public announcement may include a  
18 description of the committed person, that the person is in  
19 transitional release from the sexually violent predator  
20 program, and any other information important to public safety.

21 3. Upon the return of the committed person to a secure  
22 facility, the director of human services or the director's  
23 designee shall notify the court that issued the ex parte order  
24 that the absconder has been returned to a secure facility, and  
25 the court shall set a hearing within five days to determine if  
26 a violation occurred. If a court order was not issued, the  
27 director or the director's designee shall contact the nearest  
28 district court with jurisdiction to set a hearing to determine  
29 whether a violation of the rules or directives occurred. The  
30 court shall schedule a hearing within five days of receiving  
31 notice that the committed person has been returned from the  
32 transitional release program to a secure facility.

33 4. At the hearing the burden shall be upon the attorney  
34 general to show by a preponderance of the evidence that a  
35 violation of the rules or directives occurred. The hearing

1 shall be to the court.

2 5. If the court determines a violation occurred, the court  
3 shall either order the committed person to be returned to the  
4 transitional release program or to be confined in a secure  
5 facility. The court may impose further conditions upon the  
6 committed person if returned to the transitional release  
7 program. If the court determines no violation occurred, the  
8 committed person shall be returned to the transitional release  
9 program.

10 Sec. 22. NEW SECTION. 229A.9A RELEASE WITH SUPERVISION.

11 1. In any proceeding under section 229A.8, the court may  
12 order the committed person released from a secure facility  
13 with or without supervision if any of the following apply:

14 a. The state stipulates to the release with or without  
15 supervision.

16 b. The court or jury has determined that the person should  
17 be discharged from the program, but the court has determined  
18 it is in the best interest of the community to order release  
19 with or without supervision before the committed person is  
20 discharged.

21 2. If release with or without supervision is ordered, the  
22 department of human services shall prepare within thirty days  
23 of the order of the court a release plan addressing the  
24 person's needs for counseling, medication, community support  
25 services, residential services, vocational services, alcohol  
26 or other drug abuse treatment, sex offender treatment, or any  
27 other treatment or supervision necessary.

28 3. The court shall set a hearing on the release plan  
29 prepared by the department of human services before the  
30 committed person is released from a secure facility or a  
31 transitional release program.

32 4. If the court orders release with supervision, the court  
33 shall order supervision by an agency with jurisdiction that is  
34 familiar with the placement of criminal offenders in the  
35 community. The agency with jurisdiction shall be responsible

1 for initiating proceedings for violations of the release plan  
2 as provided in section 229A.9B. If the court orders release  
3 without supervision, the agency with jurisdiction shall also  
4 be responsible for initiating proceedings for any violations  
5 of the release plan as provided in section 229A.9B.

6 5. A committed person may not petition the court for  
7 release with or without supervision.

8 6. A committed person released with or without supervision  
9 is not considered discharged from civil commitment under this  
10 chapter.

11 7. After being released with or without supervision, the  
12 person may petition the court for discharge as provided in  
13 section 229A.8.

14 Sec. 23. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH  
15 OR WITHOUT SUPERVISION.

16 1. If a committed person violates the release plan, the  
17 agency with jurisdiction over the person may request the  
18 district court to issue an emergency ex parte order directing  
19 any law enforcement officer to take the person into custody so  
20 that the person can be returned to a secure facility. The  
21 request for an ex parte order may be made orally or by  
22 telephone, but the original written request or a facsimile  
23 copy of the request shall be filed with the clerk of court no  
24 later than four-thirty p.m. on the next business day the  
25 office of the clerk of court is open.

26 2. If a committed person has absconded in violation of the  
27 conditions of the person's release plan, a presumption arises  
28 that the person poses a risk to public safety. The department  
29 of human services, in cooperation with local law enforcement  
30 agencies, may make a public announcement about the absconder.  
31 The public announcement may include a description of the  
32 committed person, that the committed person is on release with  
33 or without supervision from the sexually violent predator  
34 program, and any other information pertinent to public safety.

35 3. Upon the return of the committed person to a secure

1 facility, the director of human services or the director's  
 2 designee shall notify the court that issued the ex parte order  
 3 that the committed person has been returned to a secure  
 4 facility, and the court shall set hearing within five days to  
 5 determine if a violation occurred. If a court order was not  
 6 issued, the director or the director's designee shall contact  
 7 the nearest district court with jurisdiction to set a hearing  
 8 to determine whether a violation of the conditions of the  
 9 release plan occurred. The court shall schedule a hearing  
 10 within five days of receiving notice that the committed person  
 11 has been returned to a secure facility.

12 4. At the hearing the burden shall be upon the attorney  
 13 general to show by a preponderance of the evidence that a  
 14 violation of the release plan occurred.

15 5. If the court determines a violation occurred, the court  
 16 shall either order that the committed person be returned to  
 17 release with or without supervision or placed in a  
 18 transitional release program, or be confined in a secure  
 19 facility. The court may impose further conditions upon the  
 20 committed person if returned to release with or without  
 21 supervision or placed in the transitional release program. If  
 22 the court determines no violation occurred, the committed  
 23 person shall be returned to release with or without  
 24 supervision.

25 Sec. 24. Section 229A.10, Code 2001, is amended to read as  
 26 follows:

27 229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

28 1. If the director of human services determines that the  
 29 person's mental abnormality has so changed that the person is  
 30 not likely to commit predatory acts or sexually violent  
 31 offenses if discharged, the director shall authorize the  
 32 person to petition the court for discharge. The petition  
 33 shall be served upon the court and the attorney general. The  
 34 court, upon receipt of the petition for discharge, shall order  
 35 a hearing within thirty days. The attorney general shall

1 represent the state, and shall have the right to have the  
2 petitioner examined by an expert or professional person of the  
3 attorney general's choice. The hearing shall be before a jury  
4 if demanded by either the petitioner or the attorney general.  
5 The burden of proof shall be upon the attorney general to show  
6 beyond a reasonable doubt that the petitioner's mental  
7 abnormality or personality disorder remains such that the  
8 ~~petitioner is not safe to be at large and that if discharged~~  
9 is likely to commit engage in predatory acts or ~~sexually~~  
10 violent that constitute sexually violent offenses if  
11 discharged.

12 2. Upon a finding that the state has failed to meet its  
13 burden of proof under this section, ~~or a stipulation by the~~  
14 ~~state,~~ the court shall authorize ~~the release of~~ the committed  
15 person to be discharged. ~~Release may be ordered with or~~  
16 ~~without supervision. If supervised release is ordered, the~~  
17 ~~department of human services shall prepare a plan addressing~~  
18 ~~the person's needs for counseling, medication, community~~  
19 ~~support services, residential services, vocational services,~~  
20 ~~alcohol and other drug abuse treatment, and any other~~  
21 ~~treatment or supervision necessary. If the court orders the~~  
22 ~~release of the committed person with supervision, the court~~  
23 ~~shall order supervision by an agency with jurisdiction that is~~  
24 ~~familiar with the placement of criminal offenders in the~~  
25 ~~community.~~

26 Sec. 25. Section 229A.11, Code 2001, is amended to read as  
27 follows:

28 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.

29 Nothing in this chapter shall prohibit a person from filing  
30 a petition for discharge or placement in a transitional  
31 release program, pursuant to this chapter. However, if a  
32 person has previously filed a petition for discharge or for  
33 placement in a transitional release program without the  
34 authorization of the director of human services, and the court  
35 determines either upon review of the petition or following a

1 hearing that the petition was frivolous or that the  
 2 petitioner's condition had not so changed that the person was  
 3 safe-to-be-at-large not likely to engage in predatory acts  
 4 constituting sexually violent offenses if discharged, or was  
 5 not suitable for placement in the transitional release  
 6 program, then the court shall summarily deny the subsequent  
 7 petition unless the petition contains facts upon which a court  
 8 could find the condition of the petitioner had so changed that  
 9 a hearing was warranted. Upon receipt of a first or  
 10 subsequent petition from a committed person without the  
 11 director's authorization, the court shall endeavor whenever  
 12 possible to review the petition and determine if the petition  
 13 is based upon frivolous grounds. If the court determines that  
 14 a petition is frivolous, the court shall ~~deny~~ dismiss the  
 15 petition without a hearing.

16 Sec. 26. Section 229A.12, Code 2001, is amended to read as  
 17 follows:

18 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR  
 19 COSTS -- REIMBURSEMENT.

20 The director of human services shall be responsible for all  
 21 costs relating to the evaluation, treatment, and services  
 22 provided to persons committed to the director's custody after  
 23 the court or jury determines that the respondent is a sexually  
 24 violent predator and pursuant to commitment under any  
 25 provision of this chapter. If placement in a transitional  
 26 release program or supervision is ordered ~~pursuant-to-section~~  
 27 ~~229A-10~~, the director shall also be responsible for all costs  
 28 related to the transitional release program or to the  
 29 supervision and treatment of any person. Reimbursement may be  
 30 obtained by the director from the patient and any person  
 31 legally liable or bound by contract for the support of the  
 32 patient for the cost of confinement, or of care and treatment  
 33 provided. As used in this section, "any person legally  
 34 liable" does not include a political subdivision.

35 Sec. 27. NEW SECTION. 229A.12A DIRECTOR OF THE

1 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

2 The director of the department of corrections shall have  
3 authority, once a person is detained pursuant to section  
4 229A.5, to make a determination as to which appropriate secure  
5 facility the safekeeper is to be placed, taking into  
6 consideration the safekeeper's medical needs and ability to  
7 interact with offenders who have been committed to the custody  
8 of the director of the department of corrections. The  
9 director has authority to determine the safekeeper's degree of  
10 segregation from offenders, including whether total  
11 segregation is appropriate under the circumstances or whether  
12 the safekeeper should be permitted to participate in normal  
13 confinement activities in the presence of offenders.

14 Sec. 28. Section 229A.14, Code 2001, is amended to read as  
15 follows:

16 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION  
17 AND RECORDS.

18 Notwithstanding ~~anything-in-chapter-22-to-the-contrary~~, any  
19 provision in the Code regarding confidentiality to the  
20 contrary, any relevant information and records which would  
21 otherwise be confidential or privileged shall be released to  
22 the agency with jurisdiction or the attorney general for the  
23 purpose of meeting the notice requirement provided in section  
24 229A.3 and determining whether a person is or continues to be  
25 a sexually violent predator.

26 Sec. 29. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

27 A victim of a crime that was committed by a safekeeper or  
28 by a person subjected to an order of civil commitment pursuant  
29 to this chapter, may obtain a protective order against the  
30 safekeeper or person using the procedures set out in section  
31 915.22.

32 Sec. 30. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

33 The department of human services shall adopt rules pursuant  
34 to chapter 17A necessary to administer this chapter.

35 Sec. 31. Section 811.1, subsections 1 and 2, Code 2001,

1 are amended to read as follows:

2 1. A defendant awaiting judgment of conviction and  
 3 sentencing following either a plea or verdict of guilty of a  
 4 class "A" felony, murder, any class "B" felony included in  
 5 section 462A.14 or 707.6A; felonious assault; felonious child  
 6 endangerment; sexual abuse in the second degree; sexual abuse  
 7 in the third degree; kidnapping; robbery in the first degree;  
 8 arson in the first degree; burglary in the first degree; any  
 9 felony included in section 124.401, subsection 1, paragraph  
 10 "a" or "b"; or a second or subsequent offense under section  
 11 124.401, subsection 1, paragraph "c"; or any felony punishable  
 12 under section 902.9, subsection 1; any public offense  
 13 committed while detained pursuant to section 229A.5; or any  
 14 public offense committed while subject to an order of  
 15 commitment pursuant to chapter 229A.

16 2. A defendant appealing a conviction of a class "A"  
 17 felony; murder; any class "B" or "C" felony included in  
 18 section 462A.14 or 707.6A; felonious assault; felonious child  
 19 endangerment; sexual abuse in the second degree; sexual abuse  
 20 in the third degree; kidnapping; robbery in the first degree;  
 21 arson in the first degree; burglary in the first degree; any  
 22 felony included in section 124.401, subsection 1, paragraph  
 23 "a" or "b"; or a second or subsequent conviction under section  
 24 124.401, subsection 1, paragraph "c"; or any felony punishable  
 25 under section 902.9, subsection 1; any public offense  
 26 committed while detained pursuant to section 229A.5; or any  
 27 public offense committed while subject to an order of  
 28 commitment pursuant to chapter 229A.

29 Sec. 32. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
30 3, shall not apply to this Act.

31 Sec. 33. DIRECTIVE TO CODE EDITOR. The Code editor is  
32 directed to renumber sections in chapter 229A and correct  
33 internal references as necessary in conjunction with the  
34 enactment of this Act.

35

EXPLANATION

1 This bill makes numerous changes to the sexually violent  
2 predator Act in Code chapter 229A.

3 DEFINITIONS. The bill defines "safekeeper" to mean a  
4 person who is confined in an appropriate secure facility, but  
5 who is not subject to an order of commitment. The bill  
6 defines "discharge" to mean an unconditional discharge from  
7 the sexually violent predator program. The bill changes the  
8 definition of "predatory" to mean an act directed toward a  
9 person with whom contact or interaction has been established  
10 or promoted for the primary purpose of making the person the  
11 object or victim of a sexually violent offense. The bill  
12 permits the dual civil commitment of a person and defines  
13 "dual commitment" to mean a simultaneous commitment pursuant  
14 to Code chapter 229A and Code chapter 125, 229, or 812,  
15 provided the commitments are not inconsistent. The bill  
16 creates a transitional release program and defines  
17 "transitional release" to mean a conditional release from a  
18 secure facility with conditions of such a release set by the  
19 court or the department of human services.

20 INITIAL REVIEW. The bill provides that upon the filing of  
21 a petition to commit a sexually violent predator, the court  
22 shall conduct an initial review of the petition and supporting  
23 statements to verify the identity of the person named in the  
24 petition, and to determine whether competent evidence was  
25 presented to show sufficient facts exist which would lead a  
26 reasonable person to believe the person named in the petition  
27 is a sexually violent predator. The bill provides that in  
28 determining whether sufficient facts exist, the court may rely  
29 on the petition and supporting statement filed by the state  
30 and no hearing is required. If the court finds sufficient  
31 facts do exist, the bill requires the court to order the  
32 person be taken into custody and placed in an appropriate  
33 secure facility, if the person is not already in custody.  
34 Upon a finding that sufficient facts do exist, the bill also  
35 provides that the court shall order an evaluation of the

1 person be conducted, set trial within 90 days of the initial  
2 review, and appoint an attorney to represent the respondent,  
3 if the person is indigent.

4     **OBJECTIONS TO INITIAL REVIEW.** The bill permits the person  
5 to object to the findings of the initial review. Under the  
6 bill the person may object for the following reasons: the  
7 person named in the petition is not the person in custody, the  
8 person in custody is not the same person alleged to have  
9 committed the sexually violent offenses, or no competent  
10 evidence exists to show that sufficient facts exist to lead a  
11 reasonable person to believe the person is a sexually violent  
12 predator. The bill requires the court to issue its written  
13 findings as to whether sufficient facts exist within 72 hours  
14 of the hearing on the objections. If the court finds that  
15 sufficient facts do not exist, the court shall immediately  
16 notify the parties and permit the state 24 hours to amend the  
17 petition and any supporting statement. If after a hearing on  
18 the amended petition the court finds that sufficient facts  
19 still do not exist, the petition shall be dismissed. The bill  
20 permits the state to file an emergency appeal with the Iowa  
21 supreme court as to whether sufficient facts exist to support  
22 the amended petition. The bill provides that if an emergency  
23 appeal is filed, the person shall remain confined pending the  
24 decision of the Iowa supreme court.

25     **TRIAL.** The bill provides that a trial to determine whether  
26 a person is a sexually violent predator shall be held within  
27 90 days of the findings in the initial review. The bill  
28 allows the person or the attorney for the person to waive the  
29 90-day trial requirement, and to reassert the demand for a 90-  
30 day trial if previously waived. The bill and current law  
31 provide that the trial may be to the court or to a jury, and  
32 either party or the court may demand a jury trial. The bill  
33 provides that the Iowa rules of evidence and the Iowa rules of  
34 civil procedure shall apply to the trial, unless otherwise  
35 specified. The bill permits the introduction of previous

1 sexually violent offenses into evidence, and states that the  
2 prior offenses are relevant and probative, whether criminal  
3 charges were filed or not filed, notwithstanding any Iowa rule  
4 of evidence to the contrary. The bill provides that the  
5 evidence of prior sexually violent offenses may be introduced  
6 in document form, including initial review transcripts, trial  
7 transcripts, probation and sentencing reports, and evaluations  
8 by mental health experts. The bill also permits the  
9 introduction of testimonial evidence by the victim of a prior  
10 sexually violent offense, whether criminal charges were filed  
11 or not filed, and states that the prior facts and  
12 circumstances are relevant and probative, notwithstanding any  
13 Iowa rule of evidence to the contrary. The bill provides that  
14 the testimonial evidence may be presented by telephone or  
15 electronic means, by videotape, or by prior sworn testimony.  
16 If the person is civilly committed, the person shall be under  
17 the control, care, and treatment of the department of human  
18 services until the person is discharged from the program.

19 ANNUAL REVIEW AND FINAL HEARING. The bill and current law  
20 provide that a sexually violent predator is entitled to an  
21 annual examination of the person's mental abnormality. The  
22 bill provides that the court shall conduct an annual review,  
23 and if warranted set a final hearing on the status of the  
24 committed person.

25 Annual review. The bill provides that the Iowa rules of  
26 evidence do not apply to an annual review and the sexually  
27 violent predator is not entitled to be present at the annual  
28 review; however, the person's attorney may be present. The  
29 burden is on the sexually violent predator to show by a  
30 preponderance of the evidence that there is competent evidence  
31 to lead a reasonable person to believe a final hearing should  
32 be held to determine that the mental abnormality of the  
33 sexually violent predator has so changed that the person is  
34 not likely to engage in predatory acts constituting sexually  
35 violent offenses if discharged, or whether the sexually

1 violent predator is suitable for placement in a transitional  
 2 release program. If at the time of the annual review the  
 3 sexually violent predator has filed a petition for discharge  
 4 or placement in the transitional release program with the  
 5 permission of the director of human services, the court shall  
 6 not conduct an annual review but shall set a final hearing on  
 7 the petition. If at the time of the annual review the  
 8 sexually violent predator has filed a petition without  
 9 authorization from the director, the court shall first conduct  
 10 an annual review to determine if a final hearing is warranted.

11 Final hearing. The bill provides that the purpose of the  
 12 final hearing is to determine whether the mental abnormality  
 13 of the sexually violent predator has so changed that the  
 14 person is not likely to engage in predatory acts constituting  
 15 sexually violent offenses if discharged, or the sexually  
 16 violent predator is suitable for placement in a transitional  
 17 release program. The bill and current law provide that either  
 18 party or the court may request a jury to make the  
 19 determination. The bill provides that if the case is before a  
 20 jury, the verdict must be unanimous on the issue of whether to  
 21 discharge, or to place in a transitional release program.

22 TRANSITIONAL RELEASE. The bill establishes a transitional  
 23 release program which provides for the conditional release of  
 24 a sexually violent predator from a secure facility. The bill  
 25 permits the department of human services or the court to place  
 26 conditions on such a release. The bill provides that a  
 27 sexually violent predator is suitable for placement in a  
 28 transitional release program if all of the following apply:  
 29 the person is no longer classified as "high risk" to reoffend,  
 30 significant insights have been achieved in the sex offending  
 31 cycle, acceptance of responsibility for past behavior and an  
 32 understanding has been achieved about the impact sexually  
 33 violent crimes have on a victim, a relapse prevention program  
 34 has been developed, no major discipline reports have been  
 35 filed during the previous year, the person is not likely to

1 attempt to escape or leave the program, acts constituting a  
2 sexually violent offense are not likely to occur, it is in the  
3 best interest of the committed person, and a willingness to  
4 abide by rules has been demonstrated.

5 Violations of transitional release. The bill provides that  
6 the treatment staff of a transitional release program may  
7 remove a sexually violent predator from the program and  
8 transfer the person back to a secure facility for a violation  
9 of the conditions of release. The bill provides that the  
10 treatment staff may request an ex parte order directing a  
11 local law enforcement agency to take the sexually violent  
12 predator into custody so the person can be returned to a  
13 secure facility. The bill provides that if a sexually violent  
14 predator has absconded from the program, the department of  
15 human services, in cooperation with a local law enforcement  
16 agency, may make a public announcement about the sexually  
17 violent predator. Upon the return of the sexually violent  
18 predator to a secure facility, the court shall determine if a  
19 violation of a condition of release occurred. If the court  
20 determines a violation did occur, the court may order the  
21 person to remain confined in a secure facility, or the court  
22 may return the person to the transitional release program  
23 subject to further terms and conditions.

24 SUPERVISED RELEASE. The bill and current law provide for  
25 release with or without supervision. The bill provides that  
26 the court may order release with or without supervision in  
27 lieu of discharge if during the annual review or final hearing  
28 one of the following occurs: the state and the sexually  
29 violent offender stipulate to release with or without  
30 supervision, or the court or jury has determined the person  
31 should be discharged from the program but the court determines  
32 it is in the best interest of the community that the person be  
33 released with or without supervision. Within 30 days of  
34 ordering release with or without supervision, the court shall  
35 have a hearing regarding a release plan prepared by the

1 department of human services. The bill provides that if the  
 2 court orders release with supervision, the court shall order  
 3 supervision by an agency with jurisdiction that is familiar  
 4 with the placement of criminal offenders in the community. If  
 5 the person is released without supervision, the agency shall  
 6 be responsible for initiating proceedings against the sexually  
 7 violent predator if a violation of the release plan occurs.  
 8 The bill provides that a person released with or without  
 9 supervision is not considered discharged from the sexually  
 10 violent predator program. The bill provides that the sexually  
 11 violent predator may petition the court for discharge from the  
 12 program if released with or without supervision.

13 Violations of release with or without supervision. The  
 14 bill provides that if a violation of the release plan occurs,  
 15 the agency with jurisdiction may request the district court to  
 16 issue an emergency ex parte order directing a law enforcement  
 17 agency to take the sexually violent predator into custody so  
 18 the person can be returned to a secure facility. The bill  
 19 provides that if a sexually violent predator has absconded in  
 20 violation of the release plan, the department of human  
 21 services, in cooperation with a local law enforcement agency,  
 22 may make a public announcement about the sexually violent  
 23 predator. Upon the return of the sexually violent predator to  
 24 a secure facility, the court shall determine if a violation of  
 25 the release plan occurred. If the court determines a  
 26 violation did occur, the court may order the person remain  
 27 confined in a secure facility, or the court may place the  
 28 person in the transitional release program or return the  
 29 person to release with or without supervision subject to  
 30 further terms and conditions.

31 DUAL COMMITMENT. The bill provides for the dual commitment  
 32 of a sexually violent predator. The bill provides that civil  
 33 commitment proceedings may be initiated pursuant to Code  
 34 chapter 125, 229, or 812 at any time after a petition to  
 35 civilly commit a person as a sexually violent predator has

1 been filed. The bill provides that civil commitment for  
2 sexually violent predators takes priority for the purpose of  
3 treatment over other civil commitment. The bill provides that  
4 the director of human services shall coordinate the payment of  
5 costs under a dual commitment. The bill provides that if  
6 services were provided to the person under Code chapter 125,  
7 229, or 812, then those services shall be paid as provided in  
8 that chapter.

9 TRANSPORT ORDERS. The bill provides that a transport order  
10 may only be requested by the court, the state, or the sexually  
11 violent predator's attorney. The bill provides that a  
12 sexually violent predator may be transported to trial and any  
13 other court proceedings if the court authorizes a transport  
14 order, and the transportation shall be provided by the sheriff  
15 in which the action is brought, or as otherwise agreed to by  
16 the parties. The bill also provides that a transport order is  
17 not necessary to transport a sexually violent predator to a  
18 medical facility or to an evaluation, and that transportation  
19 shall be provided by the county in which the person is  
20 confined. The bill provides that transportation shall be  
21 provided by the department of human services for placement in  
22 a transitional release program or supervised release.

23 CRIMINAL OFFENSES COMMITTED WHILE DETAINED. The bill  
24 provides that if a person being detained for commitment or who  
25 has been civilly committed commits a crime, the civil  
26 commitment proceedings or treatment process shall be suspended  
27 until the criminal proceedings, including any term of  
28 confinement, are completed. The bill provides that upon the  
29 filing of a criminal complaint, indictment, or information the  
30 person shall be transferred to the county jail in the county  
31 where the crime occurred until the criminal proceedings have  
32 been completed. The bill provides that if the person is  
33 sentenced to a term of confinement in the county jail as a  
34 result of the criminal offense, the person shall serve the  
35 sentence in the county jail. If the person is sentenced to

1 prison, the person shall serve the sentence at a correctional  
2 institution. The bill provides that the person shall not be  
3 released from jail or paroled or released to a facility or  
4 program located outside the jail or prison other than to a  
5 secure facility operated by the department of human services  
6 upon completion of the term of confinement.

7 DEPARTMENT OF CORRECTIONS. Upon placement in an  
8 appropriate secure facility, the director of the department of  
9 corrections has authority to determine in which appropriate  
10 secure facility the safekeeper will be placed, and has  
11 authority to determine the level of segregation the sex  
12 offender will be subjected to while in the placement.

13 PROTECTIVE ORDER. The bill provides that a victim of a  
14 person detained or committed pursuant to Code chapter 229A may  
15 obtain a protective order against a safekeeper or person  
16 committed using the same procedures as in Code section 915.22,  
17 relating to civil injunctions to restrain harassment or  
18 intimidation of victims or witnesses.

19 RULEMAKING AUTHORITY. The bill grants rulemaking authority  
20 to the department of human services to administer the sexually  
21 violent predator program.

22 STATE MANDATE. The bill may include a state mandate as  
23 defined in Code section 25B.3. The bill makes inapplicable  
24 Code section 25B.2, subsection 3, which would relieve a  
25 political subdivision from complying with a state mandate if  
26 funding for the cost of the state mandate is not provided or  
27 specified. Therefore, political subdivisions are required to  
28 comply with any state mandate included in the bill.

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FILED FEB 25 2002

SENATE FILE 2286  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3141)

Passed Senate, <sup>(P. 546)</sup> Date 3/7/02 Passed House, <sup>(P. 1306)</sup> Date 4-10-02  
Vote: Ayes 44 Nays 0 Vote: Ayes 99 Nays 0  
Approved April 30, 2002

<sup>(P. 1148)</sup> Re-passed 4-12-02  
Vote 45-0

A BILL FOR

1 An Act relating to the civil commitment of sexually violent  
2 predators.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2286

1 Section 1. Section 229A.1, unnumbered paragraph 2, Code  
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for  
4 rehabilitating sexually violent predators in a prison setting  
5 is poor, because the treatment needs of this population are  
6 very long-term, and the treatment modalities for this  
7 population are very different from the traditional treatment  
8 modalities available in a prison setting or for persons  
9 appropriate for commitment under chapter 229. Therefore, the  
10 general assembly finds that a civil commitment procedure for  
11 the long-term care and treatment of the sexually violent  
12 predator is necessary. The procedures regarding sexually  
13 violent predators should reflect legitimate public safety  
14 concerns, while providing treatment services designed to  
15 benefit sexually violent predators who are civilly committed.  
16 The procedures should also reflect the need to protect the  
17 public, to respect the needs of the victims of sexually  
18 violent offenses, and to encourage full meaningful  
19 participation of sexually violent predators in treatment  
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding  
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional  
24 discharge from the sexually violent predator program. A  
25 person released from an appropriate secure facility in a  
26 transitional release program or released with or without  
27 supervision is not considered to be discharged.

28 NEW SUBSECTION. 6A. "Safekeeper" means a person who is  
29 confined in an appropriate secure facility pursuant to this  
30 chapter but who is not subject to an order of commitment  
31 pursuant to this chapter.

32 NEW SUBSECTION. 10. "Transitional release" means a  
33 conditional release from a secure facility operated by the  
34 department of human services with the conditions of such  
35 release set by the court or the department of human services.

1 Sec. 3. Section 229A.5B, Code Supplement 2001, is amended  
2 to read as follows:

3 229A.5B ESCAPE FROM CUSTODY.

4 1. A respondent person who is in-custody detained pursuant  
5 to section 229A.5 or is subject to an order of civil  
6 commitment under this chapter shall remain in custody unless  
7 released by court order or discharged under section 229A.8 or  
8 229A.10. A person who has been placed in a transitional  
9 release program or who is under release with or without  
10 supervision is considered to be in custody. A respondent  
11 person in custody under this chapter shall not do any of the  
12 following:

13 a. Leave or attempt to leave a facility without the  
14 accompaniment of authorized personnel or leave or attempt to  
15 leave a facility without authorization.

16 b. Knowingly and voluntarily be absent from a place where  
17 the respondent person is required to be present.

18 c. Leave or attempt to leave the custody of personnel  
19 transporting or guarding the respondent person while the  
20 respondent person is away from a facility.

21 2. A respondent person who violates subsection 1 commits a  
22 simple misdemeanor or may be subject to punishment for  
23 contempt. ~~If the respondent pleads guilty to, or is convicted~~  
24 ~~of an offense under this section, or is found in contempt, or~~  
25 ~~both and is sentenced to a term of confinement, the civil~~  
26 ~~commitment proceedings or treatment process may be stayed by~~  
27 ~~court order until the term of confinement is served by the~~  
28 ~~respondent.~~

29 3. If a respondent person commits a violation of  
30 subsection 1 and remains unconfined, the attorney general or  
31 the chief law enforcement officer of the political subdivision  
32 where the violation occurs may make a public announcement that  
33 the respondent person is unconfined and may provide relevant  
34 information about the respondent person to the community. The  
35 attorney general may also notify a victim or the family of a

1 victim of the respondent person that the respondent person is  
2 unconfined.

3 4. This section shall not be construed to prohibit the use  
4 of ~~the-interstate-compact-on-mental-health-as-provided-in~~  
5 ~~chapter-221~~ other lawful means for the return of the person.

6 Sec. 4. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED  
7 WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

8 1. If a person who is detained pursuant to section 229A.5  
9 or who is subject to an order of civil commitment under this  
10 chapter commits a public offense, the civil commitment  
11 proceedings or treatment process shall be suspended until the  
12 criminal proceedings, including any term of confinement, are  
13 completed. The person shall also not be eligible for bail  
14 pursuant to section 811.1.

15 2. Upon the filing of a complaint, indictment, or  
16 information, the person shall be transferred to the county  
17 jail in the county where the public offense occurred until the  
18 criminal proceedings have been completed. If the person is  
19 sentenced to a term of confinement in a county jail, the  
20 person shall serve the sentence at the county jail. If the  
21 person is sentenced to the custody of the director of the  
22 department of corrections, the person shall serve the sentence  
23 at a correctional institution.

24 3. A person shall not be released from jail or paroled or  
25 released to a facility or program located outside the county  
26 jail or correctional institution other than to a secure  
27 facility operated by the department of human services.

28 4. A person who committed a public offense while in a  
29 transitional release program or on release with or without  
30 supervision may be returned to a secure facility operated by  
31 the department of human services upon completion of any term  
32 of confinement that resulted from the commission of the public  
33 offense.

34 5. If the civil commitment proceedings for a person are  
35 suspended due to the commission of a public offense by the

1 person, the ninety-day trial demand lapses. Upon completion  
2 of any term of confinement that resulted from the commission  
3 of the public offense, a new ninety-day trial demand  
4 automatically begins.

5 Sec. 5. NEW SECTION. 229A.5D MEDICAL TREATMENT.

6 A safekeeper is entitled to necessary medical treatment.

7 Sec. 6. NEW SECTION. 229A.6A TRANSPORT ORDERS.

8 1. A person who has been detained prior to trial pursuant  
9 to section 229A.5 or who has been civilly committed may be  
10 transported for the following purposes:

11 a. To trial and any other court proceedings if the court  
12 has authorized a transport order. A transport order may only  
13 be requested by the court, the person's attorney, or the  
14 attorney general. Transportation shall be provided by the  
15 sheriff of the county in which the action has been brought,  
16 unless the court specifies otherwise or the parties agree to a  
17 different transportation arrangement. If a transport order is  
18 not authorized, the person may appear at any court proceedings  
19 other than trial by telephone or electronic means.

20 b. To a medical facility for medical treatment, if  
21 necessary medical treatment is not available at the facility  
22 where the person is confined. A transport order is not  
23 required to transport the person for medical treatment.  
24 However, the person is not entitled to choose the medical  
25 facility where treatment is to be obtained or the medical  
26 personnel to provide the treatment. Transportation shall be  
27 provided by the sheriff of the county in which the person is  
28 confined.

29 c. To a medical, psychological, or psychiatric evaluation.  
30 A person shall not be transported to another facility for  
31 evaluation without a court order. When a transportation order  
32 is requested under this paragraph, notice must be provided to  
33 the opposing party, and the opposing party must be given a  
34 reasonable amount of time to object to the issuance of such an  
35 order. The cost of the transportation shall be paid by the

1 party who requests the order.

2 d. To a facility for placement in a transitional release  
3 program or for release with or without supervision. A  
4 transport order is not required under this paragraph.  
5 Transportation shall be provided by the department of human  
6 services.

7 2. This section shall not be construed to grant a person  
8 the right to personally appear at all court proceedings under  
9 this chapter.

10 Sec. 7. Section 229A.7, subsection 2, Code 2001, is  
11 amended to read as follows:

12 2. Within ninety days after either the entry of the order  
13 waiving the probable cause hearing or completion of the  
14 probable cause hearing held under section 229A.5, the court  
15 shall conduct a trial to determine whether the respondent is a  
16 sexually violent predator. The respondent or the attorney for  
17 the respondent may waive the ninety-day trial requirement as  
18 provided in this section; however, the respondent or the  
19 attorney for the respondent may reassert a demand and the  
20 trial shall be held within ninety days from the date of filing  
21 the demand with the clerk of court. The trial may be  
22 continued upon the request of either party and a showing of  
23 good cause, or by the court on its own motion in the due  
24 administration of justice, and when the respondent will not be  
25 substantially prejudiced. In determining what constitutes  
26 good cause, the court shall consider the length of the  
27 pretrial detention of the respondent.

28 2A. The respondent, the attorney general, or the judge  
29 shall have the right to demand that the trial be before a  
30 jury. Such demand for the trial to be before a jury shall be  
31 filed, in writing, at least ten days prior to trial. ~~The~~  
32 ~~number-and-selection-of-jurors-shall-be-determined-as-provided~~  
33 ~~in-chapter-607A.~~ If no demand is made, the trial shall be  
34 before the court. Except as otherwise provided, the Iowa  
35 rules of evidence and the Iowa rules of civil procedure shall

1 apply to all civil commitment proceedings initiated pursuant  
2 to this chapter.

3 Sec. 8. Section 229A.7, subsections 3, 4, and 5, Code  
4 2001, are amended to read as follows:

5 3. At trial, the court or jury shall determine whether,  
6 beyond a reasonable doubt, the respondent is a sexually  
7 violent predator and there shall be no presumption to commit  
8 or not to commit. If the ~~determination-that-the-respondent-is~~  
9 ~~a-sexually-violent-predator-is-made-by-a-jury,~~ the  
10 determination case is before a jury, the verdict shall be by  
11 unanimous verdict-of-such-jury that the respondent is a  
12 sexually violent predator.

13 If the court or jury determines that the respondent is a  
14 sexually violent predator, the respondent shall be committed  
15 to the custody of the director of the department of human  
16 services for control, care, and treatment until such time as  
17 the person's mental abnormality has so changed that the person  
18 is safe to be ~~at-large~~ placed in a transitional release  
19 program or discharged. The determination may be appealed.

20 4. The control, care, and treatment of a person determined  
21 to be a sexually violent predator shall be provided at a  
22 facility operated by the department of human services. At all  
23 times prior to placement in a transitional release program or  
24 release with or without supervision, persons committed for  
25 control, care, and treatment by the department of human  
26 services pursuant to this chapter shall be kept in a secure  
27 facility and those patients shall be segregated at all times  
28 from any other patient under the supervision of the department  
29 of human services. A person committed pursuant to this  
30 chapter to the custody of the department of human services may  
31 be kept in a facility or building separate from any other  
32 patient under the supervision of the department of human  
33 services. The department of human services may enter into a  
34 chapter 28E agreement with the department of corrections or  
35 other appropriate agency in this state or another state for

1 the confinement of patients who have been determined to be  
2 sexually violent predators. Patients who are in the  
3 confinement custody of the director of the department of  
4 corrections pursuant to a chapter 28E agreement and who have  
5 not been placed in a transitional release program or released  
6 with or without supervision shall be housed and managed  
7 separately from criminal offenders in the custody of the  
8 director of the department of corrections, and except for  
9 occasional instances of supervised incidental contact, shall  
10 be segregated from those offenders.

11 5. If the court makes the determination or the jury is not  
12 satisfied-beyond-a-reasonable-doubt determines by a unanimous  
13 verdict that the respondent is not a sexually violent  
14 predator, the court shall direct the respondent's release.  
15 Upon release, the respondent shall comply with any  
16 requirements to register as a sex offender as provided in  
17 chapter 692A. Upon a mistrial, the court shall direct that  
18 the respondent be held at an appropriate secure facility until  
19 another trial is conducted. Any subsequent trial following a  
20 mistrial shall be held within ninety days of the previous  
21 trial, unless such subsequent trial is continued or the ninety  
22 days are waived as provided in subsection 2.

23 Sec. 9. Section 229A.8, Code 2001, is amended to read as  
24 follows:

25 229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR  
26 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

27 1. Upon civil commitment of a person pursuant to this  
28 chapter, a rebuttable presumption exists that the commitment  
29 should continue. The presumption may be rebutted when facts  
30 exist to warrant a hearing to determine whether a committed  
31 person no longer suffers from a mental abnormality which makes  
32 the person likely to engage in predatory acts constituting  
33 sexually violent offenses if discharged, or the committed  
34 person is suitable for placement in a transitional release  
35 program.

1 ~~1-~~ 2. Each A person committed under this chapter shall  
2 have a current examination of the person's mental abnormality  
3 made once every year. The person may retain, or if the person  
4 is indigent and so requests, the court may appoint a qualified  
5 expert or professional person to examine such person, and such  
6 expert or professional person shall be given access to all  
7 records concerning the person.

8 ~~2-~~ 3. The annual report shall be provided to the court  
9 that committed the person under this chapter. The court shall  
10 conduct an annual review and probable-cause, if warranted, set  
11 a final hearing on the status of the committed person. The  
12 annual review may be based only on written records.

13 ~~3-~~ 4. Nothing contained in this chapter shall prohibit the  
14 person from otherwise petitioning the court for discharge or  
15 placement in a transitional release program at the probable  
16 cause-hearing annual review. The director of human services  
17 shall provide the committed person with an annual written  
18 notice of the person's right to petition the court for  
19 discharge or placement in a transitional release program over  
20 the director's objection. The notice shall contain a waiver  
21 of rights. The director shall forward the notice and waiver  
22 form to the court with the annual report.

23 ~~4-~~ 5. The following provisions apply to an annual review:

24 a. The committed person shall have a right to have an  
25 attorney represent the person ~~at-the-probable-cause-hearing~~  
26 but the person is not entitled to be present at the hearing,  
27 if a hearing is held. If-the-court-at-the-hearing-determines  
28 that-probable-cause-exists-to-believe-that-the-person's

29 b. The Iowa rules of evidence do not apply.

30 c. The committed person may waive an annual review or may  
31 stipulate that the commitment should continue for another  
32 year.

33 d. The court shall review the annual report of the state  
34 and the report of any qualified expert or professional person  
35 retained by or appointed for the committed person and may

1 receive arguments from the attorney general and the attorney  
2 for the committed person if either requests a hearing. The  
3 request for a hearing must be in writing, within ten days of  
4 the filing of the notice of annual review, or on motion by the  
5 court. Such a hearing may be conducted in writing without any  
6 attorneys present.

7 e. The burden is on the committed person to show by a  
8 preponderance of the evidence that there is competent evidence  
9 which would lead a reasonable person to believe a final  
10 hearing should be held to determine either of the following:

11 (1) The mental abnormality of the committed person has so  
12 changed that the person is ~~safe-to-be-at-large-and-will~~ not  
13 likely to engage in predatory acts or constituting sexually  
14 violent offenses if discharged, ~~then the court shall set a~~  
15 final hearing on the issue.

16 (2) The committed person is suitable for placement in a  
17 transitional release program pursuant to section 229A.8A.

18 If the committed person shows by a preponderance of the  
19 evidence that a final hearing should be held on either  
20 determination under subparagraph (1) or (2), or both, the  
21 court shall set a final hearing within sixty days of the  
22 determination that a final hearing be held.

23 f. If at the time for the annual review the committed  
24 person has filed a petition for discharge or placement in a  
25 transitional release program with authorization from the  
26 director of human services, the court shall set a final  
27 hearing within ninety days of the authorization by the  
28 director, and no annual review shall be held.

29 g. If the committed person has not filed a petition, or  
30 has filed a petition for discharge or for placement in a  
31 transitional release program without authorization from the  
32 director of human services, the court shall first conduct the  
33 annual review as provided in this subsection.

34 h. Any petition can summarily be dismissed by the court as  
35 provided in section 229A.11.

1 i. If at the time of the annual review the committed  
2 person is in a secure facility and not in the transitional  
3 release program, the state shall have the right to demand that  
4 both determinations in paragraph "e" be submitted to the court  
5 or jury.

6 ~~5- 6. At-the-final-hearing,~~ The following provisions  
7 shall apply to a final hearing:

8 a. The committed person shall be entitled to be-present an  
9 attorney and is entitled to the benefit of all constitutional  
10 protections that were afforded the person at the original  
11 commitment proceeding. The attorney-general-shall-represent  
12 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have  
13 the-committed-person-evaluated-by-experts-chosen-by-the-state  
14 committed person shall be entitled to a jury trial, if such a  
15 demand is made in writing and filed with the clerk of court at  
16 least ten days prior to the final hearing.

17 b. The committed person shall also have the right to have  
18 experts evaluate the person on the person's behalf. The court  
19 shall appoint an expert if the person is indigent and requests  
20 an appointment.

21 c. The attorney general shall represent the state and  
22 shall have a right to demand a jury trial. The jury demand  
23 shall be filed, in writing, at least ten days prior to the  
24 final hearing.

25 d. The burden of proof at the final hearing shall be upon  
26 the state to prove beyond a reasonable doubt that-the either  
27 of the following:

28 (1) The committed person's mental abnormality or  
29 personality-disorder remains such that the person is-not-safe  
30 to-be-at-large-and-if-discharged is likely to engage in acts  
31 of-sexual-violence predatory acts that constitute sexually  
32 violent offenses if discharged.

33 (2) The committed person is not suitable for placement in  
34 a transitional release program pursuant to section 229A.8A.

35 e. If the case is submitted to a jury, the verdict of the

1 jury must be unanimous as to whether to discharge the person  
2 or to place the person in a transitional program.

3 f. If a mistrial is declared, the confinement or placement  
4 status of the committed person shall not change. After a  
5 mistrial has been declared, a new trial must be held within  
6 ninety days of the mistrial.

7 7. The state and the committed person may stipulate to a  
8 transfer to a transitional release program if the court  
9 approves the stipulation.

10 Sec. 10. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

11 1. The department of human services is authorized to  
12 establish a transitional release program and provide control,  
13 care, and treatment, and supervision of committed persons  
14 placed in such a program.

15 2. A committed person is suitable for placement in the  
16 transitional release program if all of the following apply:

17 a. The committed person's mental abnormality is no longer  
18 such that the person is a high risk to reoffend.

19 b. The committed person has achieved and demonstrated  
20 significant insights into the person's sex offending cycle.

21 c. The committed person has accepted responsibility for  
22 past behavior and understands the impact sexually violent  
23 crimes have upon a victim.

24 d. A detailed relapse prevention plan has been developed  
25 and accepted which is appropriate for the committed person's  
26 mental abnormality and sex offending history.

27 e. No major discipline reports have been issued for the  
28 committed person for a period of one year.

29 f. The committed person is not likely to escape or attempt  
30 to escape custody pursuant to section 229A.5B.

31 g. The committed person is not likely to commit acts  
32 constituting sexually violent offenses while in the program.

33 h. The placement is in the best interest of the committed  
34 person.

35 i. The committed person has demonstrated a willingness to

1 agree to and abide by all rules of the program.

2 3. If the committed person does not agree to the  
3 conditions of release, the person is not eligible for the  
4 transitional release program.

5 4. For purposes of registering as a sex offender under  
6 chapter 692A, a person placed in the transitional release  
7 program shall be classified a "high-risk" sex offender and  
8 public notification shall be as provided in section 692A.13A,  
9 subsection 2. A committed person who refuses to register as a  
10 sex offender is not eligible for placement in a transitional  
11 release program.

12 5. Committed persons in the transitional release program  
13 are not necessarily required to be segregated from other  
14 persons.

15 6. The department of human services shall be responsible  
16 for establishing and implementing the rules and directives  
17 regarding the location of the transitional release program,  
18 staffing needs, restrictions on confinement and the movement  
19 of committed persons, and for assessing the progress of  
20 committed persons in the program. The court may also impose  
21 conditions on a committed person placed in the program.

22 7. The department of human services may contract with  
23 other government or private agencies, including the department  
24 of corrections, to implement and administer the transitional  
25 release program.

26 Sec. 11. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL  
27 RELEASE.

28 1. The treatment staff in a transitional release program  
29 may remove the committed person from the program for a  
30 violation of any rule or directive, and return the person to a  
31 secure facility. The treatment staff may request the district  
32 court to issue an emergency ex parte order directing any law  
33 enforcement officer to take the committed person into custody  
34 so that the person can be returned to a secure facility. The  
35 request for an ex parte order may be made orally or by

1 telephone, but the original written request or a facsimile  
2 copy of the original request shall be filed with the clerk of  
3 court no later than four-thirty p.m. on the next business day  
4 the office of the clerk of court is open.

5 2. If a committed person absconds from a transitional  
6 release program in violation of the rules or directives, a  
7 presumption arises that the person poses a risk to public  
8 safety. The department of human services, in cooperation with  
9 local law enforcement agencies, may make a public announcement  
10 about the absconder. The public announcement may include a  
11 description of the committed person, that the person is in  
12 transitional release from the sexually violent predator  
13 program, and any other information important to public safety.

14 3. Upon the return of the committed person to a secure  
15 facility, the director of human services or the director's  
16 designee shall notify the court that issued the ex parte order  
17 that the absconder has been returned to a secure facility, and  
18 the court shall set a hearing within five days to determine if  
19 a violation occurred. If a court order was not issued, the  
20 director or the director's designee shall contact the nearest  
21 district court with jurisdiction to set a hearing to determine  
22 whether a violation of the rules or directives occurred. The  
23 court shall schedule a hearing within five days of receiving  
24 notice that the committed person has been returned from the  
25 transitional release program to a secure facility.

26 4. At the hearing the burden shall be upon the attorney  
27 general to show by a preponderance of the evidence that a  
28 violation of the rules or directives occurred. The hearing  
29 shall be to the court.

30 5. If the court determines a violation occurred, the court  
31 shall either order the committed person to be returned to the  
32 transitional release program or to be confined in a secure  
33 facility. The court may impose further conditions upon the  
34 committed person if returned to the transitional release  
35 program. If the court determines no violation occurred, the

1 committed person shall be returned to the transitional release  
2 program.

3 Sec. 12. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT  
4 SUPERVISION.

5 1. In any proceeding under section 229A.8, the court may  
6 order the committed person released with or without  
7 supervision if any of the following apply:

8 a. The state stipulates to the release with or without  
9 supervision.

10 b. The court or jury has determined that the person should  
11 be discharged from the program, but the court has determined  
12 it is in the best interest of the community to order release  
13 with or without supervision before the committed person is  
14 discharged.

15 2. If release with or without supervision is ordered, the  
16 department of human services shall prepare within thirty days  
17 of the order of the court a release plan addressing the  
18 person's needs for counseling, medication, community support  
19 services, residential services, vocational services, alcohol  
20 or other drug abuse treatment, sex offender treatment, or any  
21 other treatment or supervision necessary.

22 3. The court shall set a hearing on the release plan  
23 prepared by the department of human services before the  
24 committed person is released from a secure facility or a  
25 transitional release program.

26 4. If the court orders release with supervision, the court  
27 shall order supervision by an agency with jurisdiction that is  
28 familiar with the placement of criminal offenders in the  
29 community. The agency with jurisdiction shall be responsible  
30 for initiating proceedings for violations of the release plan  
31 as provided in section 229A.9B. If the court orders release  
32 without supervision, the agency with jurisdiction shall also  
33 be responsible for initiating proceedings for any violations  
34 of the release plan as provided in section 229A.9B.

35 5. A committed person may not petition the court for

1 release with or without supervision.

2 6. A committed person released with or without supervision  
3 is not considered discharged from civil commitment under this  
4 chapter.

5 7. After being released with or without supervision, the  
6 person may petition the court for discharge as provided in  
7 section 229A.8.

8 Sec. 13. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH  
9 OR WITHOUT SUPERVISION.

10 1. If a committed person violates the release plan, the  
11 agency with jurisdiction over the person may request the  
12 district court to issue an emergency ex parte order directing  
13 any law enforcement officer to take the person into custody so  
14 that the person can be returned to a secure facility. The  
15 request for an ex parte order may be made orally or by  
16 telephone, but the original written request or a facsimile  
17 copy of the request shall be filed with the clerk of court no  
18 later than four-thirty p.m. on the next business day the  
19 office of the clerk of court is open.

20 2. If a committed person has absconded in violation of the  
21 conditions of the person's release plan, a presumption arises  
22 that the person poses a risk to public safety. The department  
23 of human services, in cooperation with local law enforcement  
24 agencies, may make a public announcement about the absconder.  
25 The public announcement may include a description of the  
26 committed person, that the committed person is on release with  
27 or without supervision from the sexually violent predator  
28 program, and any other information pertinent to public safety.

29 3. Upon the return of the committed person to a secure  
30 facility, the director of human services or the director's  
31 designee shall notify the court that issued the ex parte order  
32 that the committed person has been returned to a secure  
33 facility, and the court shall set hearing within five days to  
34 determine if a violation occurred. If a court order was not  
35 issued, the director or the director's designee shall contact

1 the nearest district court with jurisdiction to set a hearing  
2 to determine whether a violation of the conditions of the  
3 release plan occurred. The court shall schedule a hearing  
4 within five days of receiving notice that the committed person  
5 has been returned to a secure facility.

6 4. At the hearing the burden shall be upon the attorney  
7 general to show by a preponderance of the evidence that a  
8 violation of the release plan occurred.

9 5. If the court determines a violation occurred, the court  
10 shall either order that the committed person be returned to  
11 release with or without supervision or placed in a  
12 transitional release program, or be confined in a secure  
13 facility. The court may impose further conditions upon the  
14 committed person if returned to release with or without  
15 supervision or placed in the transitional release program. If  
16 the court determines no violation occurred, the committed  
17 person shall be returned to release with or without  
18 supervision.

19 Sec. 14. Section 229A.10, Code 2001, is amended to read as  
20 follows:

21 229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

22 1. If the director of human services determines that the  
23 person's mental abnormality has so changed that the person is  
24 not likely to commit predatory acts or sexually violent  
25 offenses if discharged, the director shall authorize the  
26 person to petition the court for discharge. The petition  
27 shall be served upon the court and the attorney general. The  
28 court, upon receipt of the petition for discharge, shall order  
29 a hearing within thirty days. The attorney general shall  
30 represent the state, and shall have the right to have the  
31 petitioner examined by an expert or professional person of the  
32 attorney general's choice. The hearing shall be before a jury  
33 if demanded by either the petitioner or the attorney general.  
34 The burden of proof shall be upon the attorney general to show  
35 beyond a reasonable doubt that the petitioner's mental

1 abnormality or personality disorder remains such that the  
2 petitioner ~~is not safe to be at large and that if discharged~~  
3 is likely to ~~commit~~ engage in predatory acts ~~or sexually~~  
4 ~~violent~~ that constitute sexually violent offenses if  
5 discharged.

6 2. Upon a finding that the state has failed to meet its  
7 burden of proof under this section, ~~or a stipulation by the~~  
8 ~~state,~~ the court shall authorize ~~the release of~~ the committed  
9 person to be discharged. ~~Release may be ordered with or~~  
10 ~~without supervision. -- If supervised release is ordered,~~ the  
11 ~~department of human services shall prepare a plan addressing~~  
12 ~~the person's needs for counseling, medication, community~~  
13 ~~support services, residential services, vocational services,~~  
14 ~~alcohol and other drug abuse treatment, and any other~~  
15 ~~treatment or supervision necessary. -- If the court orders the~~  
16 ~~release of the committed person with supervision,~~ the court  
17 ~~shall order supervision by an agency with jurisdiction that is~~  
18 ~~familiar with the placement of criminal offenders in the~~  
19 ~~community.~~

20 Sec. 15. Section 229A.11, Code 2001, is amended to read as  
21 follows:

22 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.

23 Nothing in this chapter shall prohibit a person from filing  
24 a petition for discharge or placement in a transitional  
25 release program, pursuant to this chapter. However, if a  
26 person has previously filed a petition for discharge or for  
27 placement in a transitional release program without the  
28 authorization of the director of human services, and the court  
29 determines either upon review of the petition or following a  
30 hearing that the petition was frivolous or that the  
31 petitioner's condition had not so changed that the person was  
32 safe to be at large not likely to engage in predatory acts  
33 constituting sexually violent offenses if discharged, or was  
34 not suitable for placement in the transitional release  
35 program, then the court shall summarily deny the subsequent

1 petition unless the petition contains facts upon which a court  
2 could find the condition of the petitioner had so changed that  
3 a hearing was warranted. Upon receipt of a first or  
4 subsequent petition from a committed person without the  
5 director's authorization, the court shall endeavor whenever  
6 possible to review the petition and determine if the petition  
7 is based upon frivolous grounds. If the court determines that  
8 a petition is frivolous, the court shall deny dismiss the  
9 petition without a hearing.

10 Sec. 16. Section 229A.12, Code 2001, is amended to read as  
11 follows:

12 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR  
13 COSTS -- REIMBURSEMENT.

14 The director of human services shall be responsible for all  
15 costs relating to the evaluation, treatment, and services  
16 provided to persons committed to the director's custody after  
17 the court or jury determines that the respondent is a sexually  
18 violent predator and pursuant to commitment under any  
19 provision of this chapter. If placement in a transitional  
20 release program or supervision is ordered pursuant-to-section  
21 229A-10, the director shall also be responsible for all costs  
22 related to the transitional release program or to the  
23 supervision and treatment of any person. Reimbursement may be  
24 obtained by the director from the patient and any person  
25 legally liable or bound by contract for the support of the  
26 patient for the cost of confinement, or of care and treatment  
27 provided. As used in this section, "any person legally  
28 liable" does not include a political subdivision.

29 Sec. 17. NEW SECTION. 229A.12A DIRECTOR OF THE  
30 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

31 The director of the department of corrections shall have  
32 authority, once a person is detained pursuant to section  
33 229A.5, to make a determination as to the appropriate secure  
34 facility in which the safekeeper is to be placed, taking into  
35 consideration the safekeeper's medical needs and ability to

1 interact with offenders who have been committed to the custody  
2 of the director of the department of corrections. The  
3 director has authority to determine the safekeeper's degree of  
4 segregation from offenders, including whether total  
5 segregation is appropriate under the circumstances or whether  
6 the safekeeper should be permitted to participate in normal  
7 confinement activities in the presence of offenders.

8 Sec. 18. Section 229A.14, Code 2001, is amended to read as  
9 follows:

10 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION  
11 AND RECORDS.

12 Notwithstanding ~~anything in chapter 22 to the contrary~~, any  
13 provision in the Code regarding confidentiality to the  
14 contrary, any relevant information and records which would  
15 otherwise be confidential or privileged shall be released to  
16 the agency with jurisdiction or the attorney general for the  
17 purpose of meeting the notice requirement provided in section  
18 229A.3 and determining whether a person is or continues to be  
19 a sexually violent predator.

20 Sec. 19. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

21 A victim of a crime that was committed by a safekeeper or  
22 by a person subjected to an order of civil commitment pursuant  
23 to this chapter, may obtain a protective order against the  
24 safekeeper or person using the procedures set out in section  
25 915.22.

26 Sec. 20. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

27 The department of human services shall adopt rules pursuant  
28 to chapter 17A necessary to administer this chapter.

29 Sec. 21. Section 811.1, subsections 1 and 2, Code 2001,  
30 are amended to read as follows:

31 1. A defendant awaiting judgment of conviction and  
32 sentencing following either a plea or verdict of guilty of a  
33 class "A" felony, murder, any class "B" felony included in  
34 section 462A.14 or 707.6A; felonious assault; felonious child  
35 endangerment; sexual abuse in the second degree; sexual abuse

1 in the third degree; kidnapping; robbery in the first degree;  
2 arson in the first degree; burglary in the first degree; any  
3 felony included in section 124.401, subsection 1, paragraph  
4 "a" or "b"; or a second or subsequent offense under section  
5 124.401, subsection 1, paragraph "c"; ~~or~~ any felony punishable  
6 under section 902.9, subsection 1; any public offense  
7 committed while detained pursuant to section 229A.5; or any  
8 public offense committed while subject to an order of  
9 commitment pursuant to chapter 229A.

10 2. A defendant appealing a conviction of a class "A"  
11 felony; murder; any class "B" or "C" felony included in  
12 section 462A.14 or 707.6A; felonious assault; felonious child  
13 endangerment; sexual abuse in the second degree; sexual abuse  
14 in the third degree; kidnapping; robbery in the first degree;  
15 arson in the first degree; burglary in the first degree; any  
16 felony included in section 124.401, subsection 1, paragraph  
17 "a" or "b"; or a second or subsequent conviction under section  
18 124.401, subsection 1, paragraph "c"; ~~or~~ any felony punishable  
19 under section 902.9, subsection 1; any public offense  
20 committed while detained pursuant to section 229A.5; or any  
21 public offense committed while subject to an order of  
22 commitment pursuant to chapter 229A.

23 Sec. 22. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
24 3, shall not apply to this Act.

25 Sec. 23. DIRECTIVE TO CODE EDITOR. The Code editor is  
26 directed to renumber sections in chapter 229A and correct  
27 internal references as necessary in conjunction with the  
28 enactment of this Act.

29 EXPLANATION

30 This bill makes numerous changes to the sexually violent  
31 predator Act in Code chapter 229A.

32 DEFINITIONS. The bill defines "safekeeper" to mean a  
33 person who is confined in an appropriate secure facility, but  
34 who is not subject to an order of commitment. The bill  
35 defines "discharge" to mean an unconditional discharge from

1 the sexually violent predator program. The bill creates a  
2 transitional release program and defines "transitional  
3 release" to mean a conditional release from a secure facility  
4 with conditions of such a release set by the court or the  
5 department of human services.

6 ANNUAL REVIEW AND FINAL HEARING. The bill and current law  
7 provide that a sexually violent predator is entitled to an  
8 annual examination of the person's mental abnormality. The  
9 bill provides that the court shall conduct an annual review,  
10 and if warranted set a final hearing on the status of the  
11 committed person.

12 Annual review. The bill provides that the Iowa rules of  
13 evidence do not apply to an annual review and the sexually  
14 violent predator is not entitled to be present at the annual  
15 review; however, the person's attorney may be present. The  
16 burden is on the sexually violent predator to show by a  
17 preponderance of the evidence that there is competent evidence  
18 to lead a reasonable person to believe a final hearing should  
19 be held to determine that the mental abnormality of the  
20 sexually violent predator has so changed that the person is  
21 not likely to engage in predatory acts constituting sexually  
22 violent offenses if discharged, or whether the sexually  
23 violent predator is suitable for placement in a transitional  
24 release program. If at the time of the annual review the  
25 sexually violent predator has filed a petition for discharge  
26 or placement in the transitional release program with the  
27 permission of the director of human services, the court shall  
28 not conduct an annual review but shall set a final hearing on  
29 the petition. If at the time of the annual review the  
30 sexually violent predator has filed a petition without  
31 authorization from the director, the court shall first conduct  
32 an annual review to determine if a final hearing is warranted.

33 Final hearing. The bill provides that the purpose of the  
34 final hearing is to determine whether the mental abnormality  
35 of the sexually violent predator has so changed that the

1 person is not likely to engage in predatory acts constituting  
2 sexually violent offenses if discharged, or the sexually  
3 violent predator is suitable for placement in a transitional  
4 release program. The bill and current law provide that either  
5 party or the court may request a jury to make the  
6 determination. The bill provides that if the case is before a  
7 jury, the verdict must be unanimous on the issue of whether to  
8 discharge, or to place in a transitional release program.

9       TRANSITIONAL RELEASE. The bill establishes a transitional  
10 release program which provides for the conditional release of  
11 a sexually violent predator. The bill permits the department  
12 of human services or the court to place conditions on such a  
13 release. The bill provides that a sexually violent predator  
14 is suitable for placement in a transitional release program if  
15 all of the following apply: the person is no longer  
16 classified as "high risk" to reoffend, significant insights  
17 have been achieved in the sex offending cycle, acceptance of  
18 responsibility for past behavior and an understanding has been  
19 achieved about the impact sexually violent crimes have on a  
20 victim, a relapse prevention program has been developed, no  
21 major discipline reports have been filed during the previous  
22 year, the person is not likely to attempt to escape or leave  
23 the program, acts constituting a sexually violent offense are  
24 not likely to occur, it is in the best interest of the  
25 committed person, and a willingness to abide by rules has been  
26 demonstrated.

27       Violations of transitional release. The bill provides that  
28 the treatment staff of a transitional release program may  
29 remove a sexually violent predator from the program and  
30 transfer the person back to a secure facility for a violation  
31 of the conditions of release. The bill provides that the  
32 treatment staff may request an ex parte order directing a  
33 local law enforcement agency to take the sexually violent  
34 predator into custody so the person can be returned to a  
35 secure facility. The bill provides that if a sexually violent

1 predator has absconded from the program, the department of  
2 human services, in cooperation with a local law enforcement  
3 agency, may make a public announcement about the sexually  
4 violent predator. Upon the return of the sexually violent  
5 predator to a secure facility, the court shall determine if a  
6 violation of a condition of release occurred. If the court  
7 determines a violation did occur, the court may order the  
8 person to remain confined in a secure facility, or the court  
9 may return the person to the transitional release program  
10 subject to further terms and conditions.

11 SUPERVISED RELEASE. The bill and current law provide for  
12 release with or without supervision. The bill provides that  
13 the court may order release with or without supervision in  
14 lieu of discharge if during the annual review or final hearing  
15 one of the following occurs: the state and the sexually  
16 violent offender stipulate to release with or without  
17 supervision, or the court or jury has determined the person  
18 should be discharged from the program but the court determines  
19 it is in the best interest of the community that the person be  
20 released with or without supervision. Within 30 days of  
21 ordering release with or without supervision, the court shall  
22 have a hearing regarding a release plan prepared by the  
23 department of human services. The bill provides that if the  
24 court orders release with supervision, the court shall order  
25 supervision by an agency with jurisdiction that is familiar  
26 with the placement of criminal offenders in the community. If  
27 the person is released without supervision, the agency shall  
28 be responsible for initiating proceedings against the sexually  
29 violent predator if a violation of the release plan occurs.  
30 The bill provides that a person released with or without  
31 supervision is not considered discharged from the sexually  
32 violent predator program. The bill provides that the sexually  
33 violent predator may petition the court for discharge from the  
34 program if released with or without supervision.  
35 Violations of release with or without supervision. The

1 bill provides that if a violation of the release plan occurs,  
2 the agency with jurisdiction may request the district court to  
3 issue an emergency ex parte order directing a law enforcement  
4 agency to take the sexually violent predator into custody so  
5 the person can be returned to a secure facility. The bill  
6 provides that if a sexually violent predator has absconded in  
7 violation of the release plan, the department of human  
8 services, in cooperation with a local law enforcement agency,  
9 may make a public announcement about the sexually violent  
10 predator. Upon the return of the sexually violent predator to  
11 a secure facility, the court shall determine if a violation of  
12 the release plan occurred. If the court determines a  
13 violation did occur, the court may order the person remain  
14 confined in a secure facility, or the court may place the  
15 person in the transitional release program or return the  
16 person to release with or without supervision subject to  
17 further terms and conditions.

18 TRANSPORT ORDERS. The bill provides that a transport order  
19 may only be requested by the court, the state, or the sexually  
20 violent predator's attorney. The bill provides that a  
21 sexually violent predator may be transported to trial and any  
22 other court proceedings if the court authorizes a transport  
23 order, and the transportation shall be provided by the sheriff  
24 in which the action is brought, or as otherwise agreed to by  
25 the parties. The bill also provides that a transport order is  
26 not necessary to transport a sexually violent predator to a  
27 medical facility or to an evaluation, and that transportation  
28 shall be provided by the county in which the person is  
29 confined. The bill provides that transportation shall be  
30 provided by the department of human services for placement in  
31 a transitional release program or supervised release.

32 CRIMINAL OFFENSES COMMITTED WHILE DETAINED. The bill  
33 provides that if a person being detained for commitment or who  
34 has been civilly committed commits a crime, the civil  
35 commitment proceedings or treatment process shall be suspended

1 until the criminal proceedings, including any term of  
2 confinement, are completed. The bill provides that upon the  
3 filing of a criminal complaint, indictment, or information the  
4 person shall be transferred to the county jail in the county  
5 where the crime occurred until the criminal proceedings have  
6 been completed. The bill provides that if the person is  
7 sentenced to a term of confinement in the county jail as a  
8 result of the criminal offense, the person shall serve the  
9 sentence in the county jail. If the person is sentenced to  
10 prison, the person shall serve the sentence at a correctional  
11 institution. The bill provides that the person shall not be  
12 released from jail or paroled or released to a facility or  
13 program located outside the jail or prison other than to a  
14 secure facility operated by the department of human services  
15 upon completion of the term of confinement.

16 DEPARTMENT OF CORRECTIONS. Upon placement in an  
17 appropriate secure facility, the director of the department of  
18 corrections has authority to determine in which appropriate  
19 secure facility the safekeeper will be placed, and has  
20 authority to determine the level of segregation the sex  
21 offender will be subjected to while in the placement.

22 PROTECTIVE ORDER. The bill provides that a victim of a  
23 person detained or committed pursuant to Code chapter 229A may  
24 obtain a protective order against a safekeeper or person  
25 committed using the same procedures as in Code section 915.22,  
26 relating to civil injunctions to restrain harassment or  
27 intimidation of victims or witnesses.

28 RULEMAKING AUTHORITY. The bill grants rulemaking authority  
29 to the department of human services to administer the sexually  
30 violent predator program.

31 STATE MANDATE. The bill may include a state mandate as  
32 defined in Code section 25B.3. The bill makes inapplicable  
33 Code section 25B.2, subsection 3, which would relieve a  
34 political subdivision from complying with a state mandate if  
35 funding for the cost of the state mandate is not provided or

1 specified. Therefore, political subdivisions are required to  
2 comply with any state mandate included in the bill.

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## SENATE FILE 2286

S-5086

- 1 Amend Senate File 2286 as follows:
- 2 1. Page 1, line 25, by striking the words "an  
3 appropriate" and inserting the following: "a".
- 4 2. Page 1, line 25, by striking the word "in" and  
5 inserting the following: "into".
- 6 3. Page 3, line 24, by inserting after the word  
7 "person" the following: "who is detained pursuant to  
8 section 229A.5 or who is subject to an order of civil  
9 commitment under this chapter".
- 10 4. Page 4, line 26, by inserting after the word  
11 "Transportation" the following: "of a committed  
12 person".
- 13 5. Page 4, line 28, by inserting after the word  
14 "confined" the following: "if requested by the  
15 department of human services".
- 16 6. Page 5, line 2, by inserting after the word  
17 "placement" the following: "or treatment".
- 18 7. Page 5, by striking lines 5 and 6.
- 19 8. Page 11, line 16, by inserting after the word  
20 "if" the following: "the court finds that".
- 21 9. Page 11, line 25, by inserting after the word  
22 "accepted" the following: "by the treatment  
23 provider".
- 24 10. Page 11, line 28, by striking the words "one  
25 year" and inserting the following: "six months".
- 26 11. Page 14, line 8, by striking the word "state"  
27 and inserting the following: "attorney general".
- 28 12. Page 15, by inserting after line 7 the  
29 following:
- 30 "8. The court shall retain jurisdiction over the  
31 committed person who has been released with or without  
32 supervision until the person is discharged from the  
33 program. The department of human services shall not  
34 be held liable for any acts committed by a committed  
35 person who has been ordered released with or without  
36 supervision."
- 37 13. Page 15, line 23, by inserting after the word  
38 "services" the following: "or contracting agency".
- 39 14. Page 16, line 10, by inserting after the word  
40 "shall" the following: "receive release  
41 recommendations from the department of human services  
42 and".
- 43 15. Page 18, line 16, by striking the word  
44 "persons" and inserting the following: "persons a  
45 person that are incurred after the person is".
- 46 16. Page 18, line 34, by inserting after the word  
47 "facility" the following: "within the department of  
48 corrections".
- 49 17. Page 19, line 21, by inserting after the word  
C "committed" the following: "before the filing of a

S-5086

**S-5086**

Page 2

- 1 petition under this chapter".
- 2 18. Page 20 by inserting after line 28 the
- 3 following:
- 4 "Sec. \_\_\_\_ . EFFECTIVE DATE. This Act, being deemed
- 5 of immediate importance, takes effect upon enactment."
- 6 19. Title page, line 2, by inserting after the
- 7 word "predators" the following: ", and providing an
- 8 effective date".
- 9 20. By renumbering as necessary.

By JEFF ANGELO

**S-5086** FILED FEBRUARY 28, 2002

*adopted 3/4/02 (p. 476)*

**SENATE FILE 2286**

**S-5087**

- 1 Amend Senate File 2286 as follows:
- 2 1. Page 20, by inserting after line 22 the
- 3 following:
- 4 "Sec. \_\_\_\_ . Section 901A.1, Code Supplement 2001,
- 5 is amended by adding the following new subsection:
- 6 NEW SUBSECTION. 3. As used in this chapter, the
- 7 term "sexually violent offense" means the same as
- 8 defined in section 229A.2.
- 9 Sec. \_\_\_\_ . Section 901A.2, Code 2001, is amended by
- 10 adding the following new subsection:
- 11 NEW SUBSECTION. 5A. A person who has been placed
- 12 in a transitional release program, released with or
- 13 without supervision, or discharged pursuant to chapter
- 14 229A, and who is subsequently convicted of a sexually
- 15 predatory offense or a sexually violent offense, shall
- 16 be sentenced to life in prison on the same terms as a
- 17 class "A" felon under section 902.1, notwithstanding
- 18 any other provision of the Code to the contrary. The
- 19 terms and conditions applicable to sentences for class
- 20 "A" felons under chapters 901 through 909 shall apply
- 21 to persons sentenced under this subsection."

By JEFF ANGELO

*adopted 3/4/02 (p. 477) 72 motion to R/C - prevailed*

**S-5087** FILED FEBRUARY 28, 2002

*S-5087 adopted 3/7/02*

SENATE FILE 2286

S-5128

1 Amend the amendment, S-5087, to Senate File 2286 as  
2 follows:

- 3 1. Page 1, by striking lines 4 through 8.
- 4 2. Page 1, lines 14 and 15, by striking the words
- 5 "a sexually predatory offense or a sexually violent
- 6 offense" and inserting the following: "any felony
- 7 offense under chapter 709".

*w/d 3/7/02*

By ROBERT E. DVORSKY

S-5128 FILED MARCH 6, 2002

SENATE FILE 2286

S-5136

1 Amend Senate amendment, S-5087, to Senate File 2286  
2 as follows:

- 3 1. Page 1, line 21, by inserting after the word
- 4 "subsection." the following: "However, if the person
- 5 commits a sexually violent offense which is a
- 6 misdemeanor offense under chapter 709, the person
- 7 shall be sentenced to life in prison, with eligibility
- 8 for parole as provided in chapter 906."

By ROBERT E. DVORSKY

S-5136 FILED MARCH 7, 2002

ADOPTED

*(p. 545)*

# Legislative Fiscal Bureau

## Fiscal Note

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SF 2286 as amended by S – 5087 - Sexually Violent Predators Commitment (LSB 5189 SV)  
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)  
Fiscal Note Version – Senate File 2286 as amended by S – 5087  
Requested by Senator Steven Hansen

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### Description

Senate File 2286 as amended by S – 5087 amends Chapter 229A, Code of Iowa. The Bill provides definitions, clarifies existing law for annual review and final hearings for civilly committed sexually violent predators, and establishes a transitional release program administered by the Department of Human Services (DHS). The Bill permits the DHS to contract with other government or private agencies, including the DOC, to implement and administer the transitional release program. Senate File 2286 clarifies existing law in relation to supervised release and provides for transport orders. The Bill provides procedures to be followed in an event that the sexually violent predator commits a criminal offense. A person who has been civilly committed under Chapter 229A, Code of Iowa, and received treatment, and is subsequently convicted of a sexually predatory or sexually violent offense is sentenced to life in prison.

### Assumptions

1. There are currently 10 safekeepers and 27 civilly committed sexually violent predators housed at the Iowa Medical Classification Center at Oakdale.
2. The Civil Commitment Unit of the Office of the State Public Defender provides defense attorneys for the majority of these commitment cases.
3. The Bill simplifies the initial probable cause hearing, and streamlines the annual review process. The Office of the Attorney General received \$300,000 as an appropriation from the General Fund for FY 2001 for commitment proceedings of sexually violent predators. However, the Office spent approximately \$448,000.
4. The DHS will incur additional costs associated with establishing and administering the transitional release program.
5. The marginal cost per day for State prisons is \$16 per inmate.
6. The average daily cost for intensive supervision by Community-Based Corrections is \$9.49. The average cost per day for electronic monitoring is \$6.32. Combining these two supervision strategies results in an average daily cost of \$15.81 per day.
7. There is no impact on the Judicial Branch.

### Correctional Impact

There is no correctional impact for the life sentence imposed by SF 2286 as amended by S - 5087. There are few people who are currently civilly committed. It is unlikely that a significant number of them will transition into the community over the next five years.

### Fiscal Impact

The DHS has requested \$118,400 and 1.0 FTE position for a community residential placement program in FY 2003. This figure includes \$56,600 for one Social Worker 4, \$64,600 for contractual services such as treatment and supervision, and \$200 for travel.

The changes relating to the probable cause hearing and annual review process may result in cost containment of \$32,000 for the Office of the Attorney General.

There is no fiscal impact on the Office of the State Public Defender.

The fiscal impact on the DOC is not anticipated to be significant.

The fiscal impact on counties for operating jails is not anticipated to be significant.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Office of the State Public Defender  
Office of the Attorney General  
Office of the State Court Administrator

\_\_\_\_\_  
/s/ Dennis C Prouty

March 5, 2002

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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1 Section 1. Section 229A.1, unnumbered paragraph 2, Code  
2 2001, is amended to read as follows:

3 The general assembly further finds that the prognosis for  
4 rehabilitating sexually violent predators in a prison setting  
5 is poor, because the treatment needs of this population are  
6 very long-term, and the treatment modalities for this  
7 population are very different from the traditional treatment  
8 modalities available in a prison setting or for persons  
9 appropriate for commitment under chapter 229. Therefore, the  
10 general assembly finds that a civil commitment procedure for  
11 the long-term care and treatment of the sexually violent  
12 predator is necessary. The procedures regarding sexually  
13 violent predators should reflect legitimate public safety  
14 concerns, while providing treatment services designed to  
15 benefit sexually violent predators who are civilly committed.  
16 The procedures should also reflect the need to protect the  
17 public, to respect the needs of the victims of sexually  
18 violent offenses, and to encourage full meaningful  
19 participation of sexually violent predators in treatment  
20 programs.

21 Sec. 2. Section 229A.2, Code 2001, is amended by adding  
22 the following new subsections:

23 NEW SUBSECTION. 2A. "Discharge" means an unconditional  
24 discharge from the sexually violent predator program. A  
25 person released from a secure facility into a transitional  
26 release program or released with or without supervision is not  
27 considered to be discharged.

28 NEW SUBSECTION. 6A. "Safekeeper" means a person who is  
29 confined in an appropriate secure facility pursuant to this  
30 chapter but who is not subject to an order of commitment  
31 pursuant to this chapter.

32 NEW SUBSECTION. 10. "Transitional release" means a  
33 conditional release from a secure facility operated by the  
34 department of human services with the conditions of such  
35 release set by the court or the department of human services.

1 Sec. 3. Section 229A.5B, Code Supplement 2001, is amended  
2 to read as follows:

3 229A.5B ESCAPE FROM CUSTODY.

4 1. A respondent person who is in-custody detained pursuant  
5 to section 229A.5 or is subject to an order of civil  
6 commitment under this chapter shall remain in custody unless  
7 released by court order or discharged under section 229A.8 or  
8 229A.10. A person who has been placed in a transitional  
9 release program or who is under release with or without  
10 supervision is considered to be in custody. A respondent  
11 person in custody under this chapter shall not do any of the  
12 following:

13 a. Leave or attempt to leave a facility without the  
14 accompaniment of authorized personnel or leave or attempt to  
15 leave a facility without authorization.

16 b. Knowingly and voluntarily be absent from a place where  
17 the respondent person is required to be present.

18 c. Leave or attempt to leave the custody of personnel  
19 transporting or guarding the respondent person while the  
20 respondent person is away from a facility.

21 2. A respondent person who violates subsection 1 commits a  
22 simple misdemeanor or may be subject to punishment for  
23 contempt. ~~If the respondent pleads guilty to, or is convicted~~  
24 ~~of, an offense under this section, or is found in contempt, or~~  
25 ~~both, and is sentenced to a term of confinement, the civil~~  
26 ~~commitment proceedings or treatment process may be stayed by~~  
27 ~~court order until the term of confinement is served by the~~  
28 ~~respondent.~~

29 3. If a respondent person commits a violation of  
30 subsection 1 and remains unconfined, the attorney general or  
31 the chief law enforcement officer of the political subdivision  
32 where the violation occurs may make a public announcement that  
33 the respondent person is unconfined and may provide relevant  
34 information about the respondent person to the community. The  
35 attorney general may also notify a victim or the family of a

1 victim of the respondent person that the respondent person is  
2 unconfined.

3 4. This section shall not be construed to prohibit the use  
4 of ~~the-interstate-compact-on-mental-health-as-provided-in~~  
5 ~~chapter-221~~ other lawful means for the return of the person.

6 Sec. 4. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED  
7 WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

8 1. If a person who is detained pursuant to section 229A.5  
9 or who is subject to an order of civil commitment under this  
10 chapter commits a public offense, the civil commitment  
11 proceedings or treatment process shall be suspended until the  
12 criminal proceedings, including any term of confinement, are  
13 completed. The person shall also not be eligible for bail  
14 pursuant to section 811.1.

15 2. Upon the filing of a complaint, indictment, or  
16 information, the person shall be transferred to the county  
17 jail in the county where the public offense occurred until the  
18 criminal proceedings have been completed. If the person is  
19 sentenced to a term of confinement in a county jail, the  
20 person shall serve the sentence at the county jail. If the  
21 person is sentenced to the custody of the director of the  
22 department of corrections, the person shall serve the sentence  
23 at a correctional institution.

24 3. A person who is detained pursuant to section 229A.5 or  
25 who is subject to an order of civil commitment under this  
26 chapter shall not be released from jail or paroled or released  
27 to a facility or program located outside the county jail or  
28 correctional institution other than to a secure facility  
29 operated by the department of human services.

30 4. A person who committed a public offense while in a  
31 transitional release program or on release with or without  
32 supervision may be returned to a secure facility operated by  
33 the department of human services upon completion of any term  
34 of confinement that resulted from the commission of the public  
35 offense.

1 5. If the civil commitment proceedings for a person are  
2 suspended due to the commission of a public offense by the  
3 person, the ninety-day trial demand lapses. Upon completion  
4 of any term of confinement that resulted from the commission  
5 of the public offense, a new ninety-day trial demand  
6 automatically begins.

7 Sec. 5. NEW SECTION. 229A.5D MEDICAL TREATMENT.

8 A safekeeper is entitled to necessary medical treatment.

9 Sec. 6. NEW SECTION. 229A.6A TRANSPORT ORDERS.

10 1. A person who has been detained prior to trial pursuant  
11 to section 229A.5 or who has been civilly committed may be  
12 transported for the following purposes:

13 a. To trial and any other court proceedings if the court  
14 has authorized a transport order. A transport order may only  
15 be requested by the court, the person's attorney, or the  
16 attorney general. Transportation shall be provided by the  
17 sheriff of the county in which the action has been brought,  
18 unless the court specifies otherwise or the parties agree to a  
19 different transportation arrangement. If a transport order is  
20 not authorized, the person may appear at any court proceedings  
21 other than trial by telephone or electronic means.

22 b. To a medical facility for medical treatment, if  
23 necessary medical treatment is not available at the facility  
24 where the person is confined. A transport order is not  
25 required to transport the person for medical treatment.  
26 However, the person is not entitled to choose the medical  
27 facility where treatment is to be obtained or the medical  
28 personnel to provide the treatment. Transportation of a  
29 committed person shall be provided by the sheriff of the  
30 county in which the person is confined if requested by the  
31 department of human services.

32 c. To a medical, psychological, or psychiatric evaluation.  
33 A person shall not be transported to another facility for  
34 evaluation without a court order. When a transportation order  
35 is requested under this paragraph, notice must be provided to

1 the opposing party, and the opposing party must be given a  
2 reasonable amount of time to object to the issuance of such an  
3 order. The cost of the transportation shall be paid by the  
4 party who requests the order.

5 d. To a facility for placement or treatment in a  
6 transitional release program or for release with or without  
7 supervision. A transport order is not required under this  
8 paragraph.

\* 9 2. This section shall not be construed to grant a person  
10 the right to personally appear at all court proceedings under  
11 this chapter.

12 Sec. 7. Section 229A.7, subsection 2, Code 2001, is  
13 amended to read as follows:

14 2. Within ninety days after either the entry of the order  
15 waiving the probable cause hearing or completion of the  
16 probable cause hearing held under section 229A.5, the court  
17 shall conduct a trial to determine whether the respondent is a  
18 sexually violent predator. The respondent or the attorney for  
19 the respondent may waive the ninety-day trial requirement as  
20 provided in this section; however, the respondent or the  
21 attorney for the respondent may reassert a demand and the  
22 trial shall be held within ninety days from the date of filing  
23 the demand with the clerk of court. The trial may be  
24 continued upon the request of either party and a showing of  
25 good cause, or by the court on its own motion in the due  
26 administration of justice, and when the respondent will not be  
27 substantially prejudiced. In determining what constitutes  
28 good cause, the court shall consider the length of the  
29 pretrial detention of the respondent.

30 2A. The respondent, the attorney general, or the judge  
31 shall have the right to demand that the trial be before a  
32 jury. Such demand for the trial to be before a jury shall be  
33 filed, in writing, at least ten days prior to trial. ~~The~~  
34 ~~number-and-selection-of-jurors-shall-be-determined-as-provided~~  
35 ~~in-chapter-607A.~~ If no demand is made, the trial shall be

1 before the court. Except as otherwise provided, the Iowa  
2 rules of evidence and the Iowa rules of civil procedure shall  
3 apply to all civil commitment proceedings initiated pursuant  
4 to this chapter.

5 Sec. 8. Section 229A.7, subsections 3, 4, and 5, Code  
6 2001, are amended to read as follows:

7 3. At trial, the court or jury shall determine whether,  
8 beyond a reasonable doubt, the respondent is a sexually  
9 violent predator and there shall be no presumption to commit  
10 or not to commit. ~~If the determination-that-the-respondent-is~~  
11 ~~a-sexually-violent-predator-is-made-by-a-jury,-the~~  
12 determination case is before a jury, the verdict shall be by  
13 unanimous verdict-of-such-jury that the respondent is a  
14 sexually violent predator.

15 If the court or jury determines that the respondent is a  
16 sexually violent predator, the respondent shall be committed  
17 to the custody of the director of the department of human  
18 services for control, care, and treatment until such time as  
19 the person's mental abnormality has so changed that the person  
20 is safe to be at-large placed in a transitional release  
21 program or discharged. The determination may be appealed.

22 4. The control, care, and treatment of a person determined  
23 to be a sexually violent predator shall be provided at a  
24 facility operated by the department of human services. At all  
25 times prior to placement in a transitional release program or  
26 release with or without supervision, persons committed for  
27 control, care, and treatment by the department of human  
28 services pursuant to this chapter shall be kept in a secure  
29 facility and those patients shall be segregated at all times  
30 from any other patient under the supervision of the department  
31 of human services. A person committed pursuant to this  
32 chapter to the custody of the department of human services may  
33 be kept in a facility or building separate from any other  
34 patient under the supervision of the department of human  
35 services. The department of human services may enter into a

1 chapter 28E agreement with the department of corrections or  
2 other appropriate agency in this state or another state for  
3 the confinement of patients who have been determined to be  
4 sexually violent predators. Patients who are in the  
5 confinement custody of the director of the department of  
6 corrections pursuant to a chapter 28E agreement and who have  
7 not been placed in a transitional release program or released  
8 with or without supervision shall be housed and managed  
9 separately from criminal offenders in the custody of the  
10 director of the department of corrections, and except for  
11 occasional instances of supervised incidental contact, shall  
12 be segregated from those offenders.

13 5. If the court makes the determination or the jury is not  
14 satisfied beyond a reasonable doubt determines by a unanimous  
15 verdict that the respondent is not a sexually violent  
16 predator, the court shall direct the respondent's release.  
17 Upon release, the respondent shall comply with any  
18 requirements to register as a sex offender as provided in  
19 chapter 692A. Upon a mistrial, the court shall direct that  
20 the respondent be held at an appropriate secure facility until  
21 another trial is conducted. Any subsequent trial following a  
22 mistrial shall be held within ninety days of the previous  
23 trial, unless such subsequent trial is continued or the ninety  
24 days are waived as provided in subsection 2.

25 Sec. 9. Section 229A.8, Code 2001, is amended to read as  
26 follows:

27 229A.8 ANNUAL EXAMINATIONS<sup>7</sup> AND REVIEW -- DISCHARGE OR  
28 TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

29 1. Upon civil commitment of a person pursuant to this  
30 chapter, a rebuttable presumption exists that the commitment  
31 should continue. The presumption may be rebutted when facts  
32 exist to warrant a hearing to determine whether a committed  
33 person no longer suffers from a mental abnormality which makes  
34 the person likely to engage in predatory acts constituting  
35 sexually violent offenses if discharged, or the committed

1 person is suitable for placement in a transitional release  
2 program.

3 ~~1-~~ 2. Each A person committed under this chapter shall  
4 have a current examination of the person's mental abnormality  
5 made once every year. The person may retain, or if the person  
6 is indigent and so requests, the court may appoint a qualified  
7 expert or professional person to examine such person, and such  
8 expert or professional person shall be given access to all  
9 records concerning the person.

10 ~~2-~~ 3. The annual report shall be provided to the court  
11 that committed the person under this chapter. The court shall  
12 conduct an annual review and probable-cause, if warranted, set  
13 a final hearing on the status of the committed person. The  
14 annual review may be based only on written records.

15 ~~3-~~ 4. Nothing contained in this chapter shall prohibit the  
16 person from otherwise petitioning the court for discharge or  
17 placement in a transitional release program at the probable  
18 cause-hearing annual review. The director of human services  
19 shall provide the committed person with an annual written  
20 notice of the person's right to petition the court for  
21 discharge or placement in a transitional release program over  
22 the director's objection. The notice shall contain a waiver  
23 of rights. The director shall forward the notice and waiver  
24 form to the court with the annual report.

25 ~~4-~~ 5. The following provisions apply to an annual review:

26 a. The committed person shall have a right to have an  
27 attorney represent the person ~~at-the-probable-cause-hearing~~  
28 but the person is not entitled to be present at the hearing,  
29 if a hearing is held. ~~if-the-court-at-the-hearing-determines~~  
30 ~~that-probable-cause-exists-to-believe-that-the-person's~~

31 b. The Iowa rules of evidence do not apply.

32 c. The committed person may waive an annual review or may  
33 stipulate that the commitment should continue for another  
34 year.

35 d. The court shall review the annual report of the state

1 and the report of any qualified expert or professional person  
2 retained by or appointed for the committed person and may  
3 receive arguments from the attorney general and the attorney  
4 for the committed person if either requests a hearing. The  
5 request for a hearing must be in writing, within ten days of  
6 the filing of the notice of annual review, or on motion by the  
7 court. Such a hearing may be conducted in writing without any  
8 attorneys present.

9 e. The burden is on the committed person to show by a  
10 preponderance of the evidence that there is competent evidence  
11 which would lead a reasonable person to believe a final  
12 hearing should be held to determine either of the following:

13 (1) The mental abnormality of the committed person has so  
14 changed that the person is ~~safe-to-be-at-large-and-will~~ not  
15 likely to engage in predatory acts or constituting sexually  
16 violent offenses if discharged, ~~then-the-court-shall-set-a~~  
17 final-hearing-on-the-issue.

18 (2) The committed person is suitable for placement in a  
19 transitional release program pursuant to section 229A.8A.

20 If the committed person shows by a preponderance of the  
21 evidence that a final hearing should be held on either  
22 determination under subparagraph (1) or (2), or both, the  
23 court shall set a final hearing within sixty days of the  
24 determination that a final hearing be held.

25 f. If at the time for the annual review the committed  
26 person has filed a petition for discharge or placement in a  
27 transitional release program with authorization from the  
28 director of human services, the court shall set a final  
29 hearing within ninety days of the authorization by the  
30 director, and no annual review shall be held.

31 g. If the committed person has not filed a petition, or  
32 has filed a petition for discharge or for placement in a  
33 transitional release program without authorization from the  
34 director of human services, the court shall first conduct the  
35 annual review as provided in this subsection.

1 h. Any petition can summarily be dismissed by the court as  
2 provided in section 229A.11.

3 i. If at the time of the annual review the committed  
4 person is in a secure facility and not in the transitional  
5 release program, the state shall have the right to demand that  
6 both determinations in paragraph "e" be submitted to the court  
7 or jury.

8 ~~5- 6. At-the-final-hearing,-the~~ The following provisions  
9 shall apply to a final hearing:

10 a. The committed person shall be entitled to be-present an  
11 attorney and is entitled to the benefit of all constitutional  
12 protections that were afforded the person at the original  
13 commitment proceeding. The attorney-general-shall-represent  
14 the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have  
15 the-committed-person-evaluated-by-experts-chosen-by-the-state  
16 committed person shall be entitled to a jury trial, if such a  
17 demand is made in writing and filed with the clerk of court at  
18 least ten days prior to the final hearing.

19 b. The committed person shall also have the right to have  
20 experts evaluate the person on the person's behalf. The court  
21 shall appoint an expert if the person is indigent and requests  
22 an appointment.

23 c. The attorney general shall represent the state and  
24 shall have a right to demand a jury trial. The jury demand  
25 shall be filed, in writing, at least ten days prior to the  
26 final hearing.

27 d. The burden of proof at the final hearing shall be upon  
28 the state to prove beyond a reasonable doubt that-the either  
29 of the following:

30 (1) The committed person's mental abnormality or  
31 personality-disorder remains such that the person is-not-safe  
32 to-be-at-large-and-if-discharged is likely to engage in acts  
33 of-sexual-violence predatory acts that constitute sexually  
34 violent offenses if discharged.

35 (2) The committed person is not suitable for placement in

1 a transitional release program pursuant to section 229A.8A.

2 e. If the case is submitted to a jury, the verdict of the  
3 jury must be unanimous as to whether to discharge the person  
4 or to place the person in a transitional program.

5 f. If a mistrial is declared, the confinement or placement  
6 status of the committed person shall not change. After a  
7 mistrial has been declared, a new trial must be held within  
8 ninety days of the mistrial.

9 7. The state and the committed person may stipulate to a  
10 transfer to a transitional release program if the court  
11 approves the stipulation.

12 Sec. 10. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

13 1. The department of human services is authorized to  
14 establish a transitional release program and provide control,  
15 care, and treatment, and supervision of committed persons  
16 placed in such a program.

17 2. A committed person is suitable for placement in the  
18 transitional release program if the court finds that all of  
19 the following apply:

20 a. The committed person's mental abnormality is no longer  
21 such that the person is a high risk to reoffend.

22 b. The committed person has achieved and demonstrated  
23 significant insights into the person's sex offending cycle.

24 c. The committed person has accepted responsibility for  
25 past behavior and understands the impact sexually violent  
26 crimes have upon a victim.

27 d. A detailed relapse prevention plan has been developed  
28 and accepted by the treatment provider which is appropriate  
29 for the committed person's mental abnormality and sex  
30 offending history.

31 e. No major discipline reports have been issued for the  
32 committed person for a period of six months.

33 f. The committed person is not likely to escape or attempt  
34 to escape custody pursuant to section 229A.5B.

35 g. The committed person is not likely to commit acts

1 constituting sexually violent offenses while in the program.

2 h. The placement is in the best interest of the committed  
3 person.

4 i. The committed person has demonstrated a willingness to  
5 agree to and abide by all rules of the program.

6 3. If the committed person does not agree to the  
7 conditions of release, the person is not eligible for the  
8 transitional release program.

9 4. For purposes of registering as a sex offender under  
10 chapter 692A, a person placed in the transitional release  
11 program shall be classified a "high-risk" sex offender and  
12 public notification shall be as provided in section 692A.13A,  
13 subsection 2. A committed person who refuses to register as a  
14 sex offender is not eligible for placement in a transitional  
15 release program.

16 5. Committed persons in the transitional release program  
17 are not necessarily required to be segregated from other  
18 persons.

19 6. The department of human services shall be responsible  
20 for establishing and implementing the rules and directives  
21 regarding the location of the transitional release program,  
22 staffing needs, restrictions on confinement and the movement  
23 of committed persons, and for assessing the progress of  
24 committed persons in the program. The court may also impose  
25 conditions on a committed person placed in the program.

26 7. The department of human services may contract with  
27 other government or private agencies, including the department  
28 of corrections, to implement and administer the transitional  
29 release program.

30 Sec. 11. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL  
31 RELEASE.

32 1. The treatment staff in a transitional release program  
33 may remove the committed person from the program for a  
34 violation of any rule or directive, and return the person to a  
35 secure facility. The treatment staff may request the district

1 court to issue an emergency ex parte order directing any law  
2 enforcement officer to take the committed person into custody  
3 so that the person can be returned to a secure facility. The  
4 request for an ex parte order may be made orally or by  
5 telephone, but the original written request or a facsimile  
6 copy of the original request shall be filed with the clerk of  
7 court no later than four-thirty p.m. on the next business day  
8 the office of the clerk of court is open.

9 2. If a committed person absconds from a transitional  
10 release program in violation of the rules or directives, a  
11 presumption arises that the person poses a risk to public  
12 safety. The department of human services, in cooperation with  
13 local law enforcement agencies, may make a public announcement  
14 about the absconder. The public announcement may include a  
15 description of the committed person, that the person is in  
16 transitional release from the sexually violent predator  
17 program, and any other information important to public safety.

18 3. Upon the return of the committed person to a secure  
19 facility, the director of human services or the director's  
20 designee shall notify the court that issued the ex parte order  
21 that the absconder has been returned to a secure facility, and  
22 the court shall set a hearing within five days to determine if  
23 a violation occurred. If a court order was not issued, the  
24 director or the director's designee shall contact the nearest  
25 district court with jurisdiction to set a hearing to determine  
26 whether a violation of the rules or directives occurred. The  
27 court shall schedule a hearing within five days of receiving  
28 notice that the committed person has been returned from the  
29 transitional release program to a secure facility.

30 4. At the hearing the burden shall be upon the attorney  
31 general to show by a preponderance of the evidence that a  
32 violation of the rules or directives occurred. The hearing  
33 shall be to the court.

34 5. If the court determines a violation occurred, the court  
35 shall either order the committed person to be returned to the

1 transitional release program or to be confined in a secure  
2 facility. The court may impose further conditions upon the  
3 committed person if returned to the transitional release  
4 program. If the court determines no violation occurred, the  
5 committed person shall be returned to the transitional release  
6 program.

7 Sec. 12. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT  
8 SUPERVISION.

9 1. In any proceeding under section 229A.8, the court may  
10 order the committed person released with or without  
11 supervision if any of the following apply:

12 a. The attorney general stipulates to the release with or  
13 without supervision.

14 b. The court or jury has determined that the person should  
15 be discharged from the program, but the court has determined  
16 it is in the best interest of the community to order release  
17 with or without supervision before the committed person is  
18 discharged.

19 2. If release with or without supervision is ordered, the  
20 department of human services shall prepare within thirty days  
21 of the order of the court a release plan addressing the  
22 person's needs for counseling, medication, community support  
23 services, residential services, vocational services, alcohol  
24 or other drug abuse treatment, sex offender treatment, or any  
25 other treatment or supervision necessary.

26 3. The court shall set a hearing on the release plan  
27 prepared by the department of human services before the  
28 committed person is released from a secure facility or a  
29 transitional release program.

30 4. If the court orders release with supervision, the court  
31 shall order supervision by an agency with jurisdiction that is  
32 familiar with the placement of criminal offenders in the  
33 community. The agency with jurisdiction shall be responsible  
34 for initiating proceedings for violations of the release plan  
35 as provided in section 229A.9B. If the court orders release

1 without supervision, the agency with jurisdiction shall also  
2 be responsible for initiating proceedings for any violations  
3 of the release plan as provided in section 229A.9B.

4 5. A committed person may not petition the court for  
5 release with or without supervision.

6 6. A committed person released with or without supervision  
7 is not considered discharged from civil commitment under this  
8 chapter.

9 7. After being released with or without supervision, the  
10 person may petition the court for discharge as provided in  
11 section 229A.8.

12 8. The court shall retain jurisdiction over the committed  
13 person who has been released with or without supervision until  
14 the person is discharged from the program. The department of  
15 human services shall not be held liable for any acts committed  
16 by a committed person who has been ordered released with or  
17 without supervision.

18 Sec. 13. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH  
19 OR WITHOUT SUPERVISION.

20 1. If a committed person violates the release plan, the  
21 agency with jurisdiction over the person may request the  
22 district court to issue an emergency ex parte order directing  
23 any law enforcement officer to take the person into custody so  
24 that the person can be returned to a secure facility. The  
25 request for an ex parte order may be made orally or by  
26 telephone, but the original written request or a facsimile  
27 copy of the request shall be filed with the clerk of court no  
28 later than four-thirty p.m. on the next business day the  
29 office of the clerk of court is open.

30 2. If a committed person has absconded in violation of the  
31 conditions of the person's release plan, a presumption arises  
32 that the person poses a risk to public safety. The department  
33 of human services or contracting agency, in cooperation with  
34 local law enforcement agencies, may make a public announcement  
35 about the absconder. The public announcement may include a

1 description of the committed person, that the committed person  
2 is on release with or without supervision from the sexually  
3 violent predator program, and any other information pertinent  
4 to public safety.

5 3. Upon the return of the committed person to a secure  
6 facility, the director of human services or the director's  
7 designee shall notify the court that issued the ex parte order  
8 that the committed person has been returned to a secure  
9 facility, and the court shall set hearing within five days to  
10 determine if a violation occurred. If a court order was not  
11 issued, the director or the director's designee shall contact  
12 the nearest district court with jurisdiction to set a hearing  
13 to determine whether a violation of the conditions of the  
14 release plan occurred. The court shall schedule a hearing  
15 within five days of receiving notice that the committed person  
16 has been returned to a secure facility.

17 4. At the hearing the burden shall be upon the attorney  
18 general to show by a preponderance of the evidence that a  
19 violation of the release plan occurred.

20 5. If the court determines a violation occurred, the court  
21 shall receive release recommendations from the department of  
22 human services and either order that the committed person be  
23 returned to release with or without supervision or placed in a  
24 transitional release program, or be confined in a secure  
25 facility. The court may impose further conditions upon the  
26 committed person if returned to release with or without  
27 supervision or placed in the transitional release program. If  
28 the court determines no violation occurred, the committed  
29 person shall be returned to release with or without  
30 supervision.

31 Sec. 14. Section 229A.10, Code 2001, is amended to read as  
32 follows:

33 229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

34 1. If the director of human services determines that the  
5 person's mental abnormality has so changed that the person is

1 not likely to commit predatory acts or sexually violent  
2 offenses if discharged, the director shall authorize the  
3 person to petition the court for discharge. The petition  
4 shall be served upon the court and the attorney general. The  
5 court, upon receipt of the petition for discharge, shall order  
6 a hearing within thirty days. The attorney general shall  
7 represent the state, and shall have the right to have the  
8 petitioner examined by an expert or professional person of the  
9 attorney general's choice. The hearing shall be before a jury  
10 if demanded by either the petitioner or the attorney general.  
11 The burden of proof shall be upon the attorney general to show  
12 beyond a reasonable doubt that the petitioner's mental  
13 abnormality or personality disorder remains such that the  
14 petitioner ~~is not safe to be at large and that if discharged~~  
15 is likely to commit engage in predatory acts or sexually  
16 violent that constitute sexually violent offenses if  
17 discharged.

18 2. Upon a finding that the state has failed to meet its  
19 burden of proof under this section, ~~or a stipulation by the~~  
20 ~~state,~~ the court shall authorize ~~the release of~~ the committed  
21 person to be discharged. ~~Release may be ordered with or~~  
22 ~~without supervision. -- If supervised release is ordered, the~~  
23 ~~department of human services shall prepare a plan addressing~~  
24 ~~the person's needs for counseling, medication, community~~  
25 ~~support services, residential services, vocational services,~~  
26 ~~alcohol and other drug abuse treatment, and any other~~  
27 ~~treatment or supervision necessary. -- If the court orders the~~  
28 ~~release of the committed person with supervision, the court~~  
29 ~~shall order supervision by an agency with jurisdiction that is~~  
30 ~~familiar with the placement of criminal offenders in the~~  
31 ~~community.~~

32 Sec. 15. Section 229A.11, Code 2001, is amended to read as  
33 follows:

34 229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.

35 Nothing in this chapter shall prohibit a person from filing

1 a petition for discharge or placement in a transitional  
2 release program, pursuant to this chapter. However, if a  
3 person has previously filed a petition for discharge or for  
4 placement in a transitional release program without the  
5 authorization of the director of human services, and the court  
6 determines either upon review of the petition or following a  
7 hearing that the petition was frivolous or that the  
8 petitioner's condition had not so changed that the person was  
9 safe-to-be-at-large not likely to engage in predatory acts  
10 constituting sexually violent offenses if discharged, or was  
11 not suitable for placement in the transitional release  
12 program, then the court shall summarily deny the subsequent  
13 petition unless the petition contains facts upon which a court  
14 could find the condition of the petitioner had so changed that  
15 a hearing was warranted. Upon receipt of a first or  
16 subsequent petition from a committed person without the  
17 director's authorization, the court shall endeavor whenever  
18 possible to review the petition and determine if the petition  
19 is based upon frivolous grounds. If the court determines that  
20 a petition is frivolous, the court shall deny dismiss the  
21 petition without a hearing.

22 Sec. 16. Section 229A.12, Code 2001, is amended to read as  
23 follows:

24 229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR  
25 COSTS -- REIMBURSEMENT.

26 The director of human services shall be responsible for all  
27 costs relating to the evaluation, treatment, and services  
28 provided to persons a person that are incurred after the  
29 person is committed to the director's custody after the court  
30 or jury determines that the respondent is a sexually violent  
31 predator and pursuant to commitment under any provision of  
32 this chapter. If placement in a transitional release program  
33 or supervision is ordered pursuant-to-section-229A-10, the  
34 director shall also be responsible for all costs related to  
35 the transitional release program or to the supervision and

1 treatment of any person. Reimbursement may be obtained by the  
2 director from the patient and any person legally liable or  
3 bound by contract for the support of the patient for the cost  
4 of confinement, or of care and treatment provided. As used in  
5 this section, "any person legally liable" does not include a  
6 political subdivision.

7 Sec. 17. NEW SECTION. 229A.12A DIRECTOR OF THE  
8 DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

9 The director of the department of corrections shall have  
10 authority, once a person is detained pursuant to section  
11 229A.5, to make a determination as to the appropriate secure  
12 facility within the department of corrections in which the  
13 safekeeper is to be placed, taking into consideration the  
14 safekeeper's medical needs and ability to interact with  
15 offenders who have been committed to the custody of the  
16 director of the department of corrections. The director has  
17 authority to determine the safekeeper's degree of segregation  
18 from offenders, including whether total segregation is  
19 appropriate under the circumstances or whether the safekeeper  
20 should be permitted to participate in normal confinement  
21 activities in the presence of offenders.

22 Sec. 18. Section 229A.14, Code 2001, is amended to read as  
23 follows:

24 229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION  
25 AND RECORDS.

26 Notwithstanding ~~anything-in-chapter-22-to-the-contrary~~, any  
27 provision in the Code regarding confidentiality to the  
28 contrary, any relevant information and records which would  
29 otherwise be confidential or privileged shall be released to  
30 the agency with jurisdiction or the attorney general for the  
31 purpose of meeting the notice requirement provided in section  
32 229A.3 and determining whether a person is or continues to be  
33 a sexually violent predator.

34 Sec. 19. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

35 A victim of a crime that was committed before the filing of

1 a petition under this chapter by a safekeeper or by a person  
2 subjected to an order of civil commitment pursuant to this  
3 chapter, may obtain a protective order against the safekeeper  
4 or person using the procedures set out in section 915.22.

5 Sec. 20. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

6 The department of human services shall adopt rules pursuant  
7 to chapter 17A necessary to administer this chapter.

8 Sec. 21. Section 811.1, subsections 1 and 2, Code 2001,  
9 are amended to read as follows:

10 1. A defendant awaiting judgment of conviction and  
11 sentencing following either a plea or verdict of guilty of a  
12 class "A" felony, murder, any class "B" felony included in  
13 section 462A.14 or 707.6A; felonious assault; felonious child  
14 endangerment; sexual abuse in the second degree; sexual abuse  
15 in the third degree; kidnapping; robbery in the first degree;  
16 arson in the first degree; burglary in the first degree; any  
17 felony included in section 124.401, subsection 1, paragraph  
18 "a" or "b"; or a second or subsequent offense under section  
19 124.401, subsection 1, paragraph "c"; or any felony punishable  
20 under section 902.9, subsection 1; any public offense  
21 committed while detained pursuant to section 229A.5; or any  
22 public offense committed while subject to an order of  
23 commitment pursuant to chapter 229A.

24 2. A defendant appealing a conviction of a class "A"  
25 felony; murder; any class "B" or "C" felony included in  
26 section 462A.14 or 707.6A; felonious assault; felonious child  
27 endangerment; sexual abuse in the second degree; sexual abuse  
28 in the third degree; kidnapping; robbery in the first degree;  
29 arson in the first degree; burglary in the first degree; any  
30 felony included in section 124.401, subsection 1, paragraph  
31 "a" or "b"; or a second or subsequent conviction under section  
32 124.401, subsection 1, paragraph "c"; or any felony punishable  
33 under section 902.9, subsection 1; any public offense  
34 committed while detained pursuant to section 229A.5; or any  
35 public offense committed while subject to an order of

1 commitment pursuant to chapter 229A.

2 Sec. 22. Section 901A.1, Code Supplement 2001, is amended  
3 by adding the following new subsection:

4 NEW SUBSECTION. 3. As used in this chapter, the term  
5 "sexually violent offense" means the same as defined in  
6 section 229A.2.

7 Sec. 23. Section 901A.2, Code 2001, is amended by adding  
8 the following new subsection:

9 NEW SUBSECTION. 5A. A person who has been placed in a  
10 transitional release program, released with or without  
11 supervision, or discharged pursuant to chapter 229A, and who  
12 is subsequently convicted of a sexually predatory offense or a  
13 sexually violent offense, shall be sentenced to life in prison  
14 on the same terms as a class "A" felon under section 902.1,  
15 notwithstanding any other provision of the Code to the  
16 contrary. The terms and conditions applicable to sentences  
17 for class "A" felons under chapters 901 through 909 shall  
18 apply to persons sentenced under this subsection. However, if  
19 the person commits a sexually violent offense which is a  
20 misdemeanor offense under chapter 709, the person shall be  
21 sentenced to life in prison, with eligibility for parole as  
22 provided in chapter 906.

23 Sec. 24. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
24 3, shall not apply to this Act.

25 Sec. 25. DIRECTIVE TO CODE EDITOR. The Code editor is  
26 directed to renumber sections in chapter 229A and correct  
27 internal references as necessary in conjunction with the  
28 enactment of this Act.

29 Sec. 26. EFFECTIVE DATE. This Act, being deemed of  
30 immediate importance, takes effect upon enactment.

31  
32  
33  
34  
35

# Legislative Fiscal Bureau

## Fiscal Note

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SF 2286 - Sexually Violent Predators Commitment (LSB 5189 SV.1)  
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)  
Fiscal Note Version – As Passed by the Senate  
Requested by Representative Charles Larson, Jr.

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### Description

Senate File 2286 as passed by the Senate amends Chapter 229A, Code of Iowa. The Bill provides definitions, clarifies existing law for annual review and final hearings for civilly committed sexually violent predators, and establishes a transitional release program administered by the Department of Human Services (DHS). The Bill permits the DHS to contract with other government or private agencies, including the Department of Corrections (DOC), to implement and administer the transitional release program. Senate File 2286 as passed by the Senate clarifies existing law in relation to supervised release and provides for transport orders. The Bill provides procedures to be followed in an event that the sexually violent predator commits a criminal offense. A person who has been civilly committed under Chapter 229A, Code of Iowa, and received treatment, and is subsequently convicted of a sexually predatory or sexually violent offense is sentenced to life in prison. However, if the offense for which the offender was convicted is a misdemeanor offense, the offender is eligible for parole from the life sentence.

### Assumptions

1. There are currently 10 safekeepers and 27 civilly committed sexually violent predators housed at the Iowa Medical Classification Center at Oakdale.
2. The Civil Commitment Unit of the Office of the State Public Defender provides defense attorneys for the majority of these commitment cases.
3. The Bill simplifies the initial probable cause hearing, and streamlines the annual review process. The Office of the Attorney General received \$300,000 as an appropriation from the General Fund for FY 2001 for commitment proceedings of sexually violent predators. However, the Office spent approximately \$448,000.
4. The DHS will incur additional costs associated with establishing and administering the transitional release program.
5. The marginal cost per day for State prisons is \$16 per inmate.
6. The average daily cost for intensive supervision by Community-Based Corrections is \$9.49. The average cost per day for electronic monitoring is \$6.32. Combining these two supervision strategies results in an average daily cost of \$15.81 per day.
7. There is no impact on the Judicial Branch.

### Correctional Impact

There is no correctional impact for the life sentence imposed by SF 2286 as passed by the Senate. There are few people who are currently civilly committed. It is unlikely that a significant number of them will transition into the community over the next five years.

### Fiscal Impact

The DHS has requested \$118,400 and 1.0 FTE position for a community residential placement program in FY 2003. This figure includes \$56,600 for one Social Worker 4, \$64,600 for contractual services such as treatment and supervision, and \$200 for travel.

The changes relating to the probable cause hearing and annual review process may result in cost containment of \$32,000 for the Office of the Attorney General.

There is no fiscal impact to the Office of the State Public Defender.

The fiscal impact to the DOC is not anticipated to be significant.

The fiscal impact to counties for operating jails is not anticipated to be significant.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Office of the State Public Defender  
Office of the Attorney General  
Office of the State Court Administrator

\_\_\_\_\_  
/s/ Dennis C Prouty

March 11, 2002

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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H-8502

- 1 Amend Senate File 2286, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, by inserting before line 1 the
- 4 following:
- 5 "Sec. \_\_\_\_ . Section 229A.5, subsection 3, Code
- 6 2001, is amended to read as follows:
- 7 3. At the hearing, the rules of evidence do not
- 8 apply, and the state may rely solely upon the petition
- 9 filed under subsection 1, but the state may also
- 10 supplement the petition with additional documentary
- 11 evidence or live testimony."
- 12 2. Page 3, lines 24 and 25, by striking the words
- 13 and figure "who is detained pursuant to section 229A.5
- 14 or".
- 15 3. Page 6, lines 9 and 10, by striking the words
- 16 "and there shall be no presumption to commit or not to
- 17 commit".
- 18 4. Page 7, lines 14 and 15, by striking the words
- 19 "by a unanimous verdict".
- 20 5. Page 8, by striking lines 21 and 22, and
- 21 inserting the following: "discharge ~~over the~~
- 22 director's objection or placement in a transitional
- 23 release program without authorization from the
- 24 director. The notice shall contain a waiver".
- 25 6. Page 9, lines 5 and 6, by striking the words
- 26 "ten days of the filing of the notice of annual
- 27 review" and inserting the following: "thirty days of
- 28 the notice of annual review being provided to counsel
- 29 for the committed person".
- 30 7. Page 11, by inserting after line 1 the
- 31 following:
- 32 "\_\_\_\_ . If the director of human services has
- 33 authorized the committed person to petition for
- 34 discharge or for placement in a transitional release
- 35 program and the case is before a jury, testimony by a
- 36 victim of a prior sexually violent offense committed
- 37 by the person is not admissible. If the director has
- 38 not authorized the petition or the case is before the
- 39 court, testimony by a victim of a sexually violent
- 40 offense committed by the person may be admitted."
- 41 8. Page 11, by striking lines 2 through 4.
- 42 9. Page 17, line 11, by striking the words "The
- 43 burden" and inserting the following: "The If the
- 44 attorney general objects to the petition for
- 45 discharge, the burden".
- 46 10. Page 19, line 29, by inserting after the word
- 47 "privileged" the following: ", except information
- 48 subject to attorney-client privilege and attorney work
- 49 product,".
- 50 11. By renumbering as necessary.

By SHEY of Linn  
 KREIMAN of Davis  
 EICHHORN of Hamilton

H-8502 FILED APRIL 3, 2002

*adopted*  
 4-10-02  
 (P. 1306)

**SENATE FILE 2286**

**H-8549**

1 Amend the amendment, H-8502, to Senate File 2286,  
2 as amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 1, line 37, by inserting after the word  
5 "admissible" the following: "if the court finds that  
6 the probative value of the testimony is substantially  
7 outweighed by the danger of unfair prejudice,  
8 confusion of the issues, or misleading the jury, or by  
9 considerations of undue delay, waste of time, or  
10 needless presentation".

**By** HATCH of Polk

**H-8549** FILED APRIL 9, 2002

*W/D 4-10-02*

**HOUSE AMENDMENT TO  
SENATE FILE 2286**

**S-5460**

- 1 Amend Senate File 2286, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 2, by inserting before line 1 the  
4 following:  
5 "Sec. \_\_\_\_ . Section 229A.5, subsection 3, Code  
6 2001, is amended to read as follows:  
7 3. At the hearing, the rules of evidence do not  
8 apply, and the state may rely solely upon the petition  
9 filed under subsection 1, but the state may also  
10 supplement the petition with additional documentary  
11 evidence or live testimony."  
12 2. Page 3, line 24, by striking the words and  
13 figure "who is detained pursuant to section 229A.5  
14 or".  
15 3. Page 6, lines 9 and 10, by striking the words  
16 "and there shall be no presumption to commit or not to  
17 commit".  
18 4. Page 7, lines 14 and 15, by striking the words  
19 "by a unanimous verdict".  
20 5. Page 8, by striking lines 21 and 22, and  
21 inserting the following: "discharge ~~over the~~  
22 ~~director's objection~~ or placement in a transitional  
23 release program without authorization from the  
24 director. The notice shall contain a waiver".  
25 6. Page 9, lines 5 and 6, by striking the words  
26 "ten days of the filing of the notice of annual  
27 review" and inserting the following: "thirty days of  
28 the notice of annual review being provided to counsel  
29 for the committed person".  
30 7. Page 11, by inserting after line 1 the  
31 following:  
32 "\_\_\_\_ . If the director of human services has  
33 authorized the committed person to petition for  
34 discharge or for placement in a transitional release  
35 program and the case is before a jury, testimony by a  
36 victim of a prior sexually violent offense committed  
37 by the person is not admissible. If the director has  
38 not authorized the petition or the case is before the  
39 court, testimony by a victim of a sexually violent  
40 offense committed by the person may be admitted."  
41 8. Page 11, by striking lines 2 through 4.  
42 9. Page 17, line 11, by striking the words "The  
43 burden" and inserting the following: "The If the  
44 attorney general objects to the petition for  
45 discharge, the burden".  
46 10. Page 19, line 29, by inserting after the word  
47 "privileged" the following: ", except information  
48 subject to attorney-client privilege and attorney work  
49 product,".  
50 11. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5460 FILED APRIL 10, 2002

*Senate Concurred 4/12/02 (p. 1148)*

SENATE FILE 2286

S-5492

1 Amend the House amendment, S-5460, to Senate File  
2 2286, as amended, passed, and reprinted by the Senate,  
3 as follows:  
4 1. Page 1, line 37, by inserting after the word  
5 "admissible" the following: "if the court finds that  
6 the probative value of the testimony is substantially  
7 outweighed by the danger of unfair prejudice,  
8 confusion of the issues, or misleading the jury, or by  
9 considerations of undue delay, waste of time, or  
10 needless presentation".

By THOMAS FIEGEN  
JOHNIE HAMMOND

S-5492 FILED APRIL 11, 2002

*W/D 4/12/02 (P. 1148)*

SENATE FILE 2286

AN ACT  
RELATING TO THE CIVIL COMMITMENT OF SEXUALLY VIOLENT  
PREDATORS, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 229A.1, unnumbered paragraph 2, Code 2001, is amended to read as follows:

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full meaningful participation of sexually violent predators in treatment programs.

Sec. 2. Section 229A.2, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. "Discharge" means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

NEW SUBSECTION. 6A. "Safekeeper" means a person who is confined in an appropriate secure facility pursuant to this

chapter but who is not subject to an order of commitment pursuant to this chapter.

NEW SUBSECTION. 10. "Transitional release" means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

Sec. 3. Section 229A.5, subsection 3, Code 2001, is amended to read as follows:

3. At the hearing, the rules of evidence do not apply, and the state may rely solely upon the petition filed under subsection 1, but the state may also supplement the petition with additional documentary evidence or live testimony.

Sec. 4. Section 229A.5B, Code Supplement 2001, is amended to read as follows:

229A.5B ESCAPE FROM CUSTODY.

1. A respondent person who is in-custody detained pursuant to section 229A.5 or is subject to an order of civil commitment under this chapter shall remain in custody unless released by court order or discharged under section 229A.8 or 229A.10. A person who has been placed in a transitional release program or who is under release with or without supervision is considered to be in custody. A respondent person in custody under this chapter shall not do any of the following:

- a. Leave or attempt to leave a facility without the accompaniment of authorized personnel or leave or attempt to leave a facility without authorization.
- b. Knowingly and voluntarily be absent from a place where the respondent person is required to be present.
- c. Leave or attempt to leave the custody of personnel transporting or guarding the respondent person while the respondent person is away from a facility.

2. A respondent person who violates subsection 1 commits a simple misdemeanor or may be subject to punishment for contempt. ~~If the respondent pleads guilty to, or is convicted of, an offense under this section, or is found in contempt, or both, and is sentenced to a term of confinement, the civil~~

~~commitment-proceedings-or-treatment-process-may-be-stayed-by court-order-until-the-term-of-confinement-is-served-by-the respondent.~~

3. If a respondent person commits a violation of subsection 1 and remains unconfined, the attorney general or the chief law enforcement officer of the political subdivision where the violation occurs may make a public announcement that the respondent person is unconfined and may provide relevant information about the respondent person to the community. The attorney general may also notify a victim or the family of a victim of the respondent person that the respondent person is unconfined.

4. This section shall not be construed to prohibit the use of ~~the interstate compact on mental health as provided in chapter 221~~ other lawful means for the return of the person.

Sec. 5. NEW SECTION. 229A.5C CRIMINAL OFFENSES COMMITTED WHILE DETAINED OR SUBJECT TO AN ORDER OF COMMITMENT.

1. If a person who is detained pursuant to section 229A.5 or who is subject to an order of civil commitment under this chapter commits a public offense, the civil commitment proceedings or treatment process shall be suspended until the criminal proceedings, including any term of confinement, are completed. The person shall also not be eligible for bail pursuant to section 811.1.

2. Upon the filing of a complaint, indictment, or information, the person shall be transferred to the county jail in the county where the public offense occurred until the criminal proceedings have been completed. If the person is sentenced to a term of confinement in a county jail, the person shall serve the sentence at the county jail. If the person is sentenced to the custody of the director of the department of corrections, the person shall serve the sentence at a correctional institution.

3. A person who is subject to an order of civil commitment under this chapter shall not be released from jail or paroled or released to a facility or program located outside the county jail or correctional institution other than to a secure facility operated by the department of human services.

4. A person who committed a public offense while in a transitional release program or on release with or without supervision may be returned to a secure facility operated by the department of human services upon completion of any term of confinement that resulted from the commission of the public offense.

5. If the civil commitment proceedings for a person are suspended due to the commission of a public offense by the person, the ninety-day trial demand lapses. Upon completion of any term of confinement that resulted from the commission of the public offense, a new ninety-day trial demand automatically begins.

Sec. 6. NEW SECTION. 229A.5D MEDICAL TREATMENT.

A safekeeper is entitled to necessary medical treatment.

Sec. 7. NEW SECTION. 229A.6A TRANSPORT ORDERS.

1. A person who has been detained prior to trial pursuant to section 229A.5 or who has been civilly committed may be transported for the following purposes:

a. To trial and any other court proceedings if the court has authorized a transport order. A transport order may only be requested by the court, the person's attorney, or the attorney general. Transportation shall be provided by the sheriff of the county in which the action has been brought, unless the court specifies otherwise or the parties agree to a different transportation arrangement. If a transport order is not authorized, the person may appear at any court proceedings other than trial by telephone or electronic means.

b. To a medical facility for medical treatment, if necessary medical treatment is not available at the facility where the person is confined. A transport order is not required to transport the person for medical treatment. However, the person is not entitled to choose the medical facility where treatment is to be obtained or the medical personnel to provide the treatment. Transportation of a committed person shall be provided by the sheriff of the county in which the person is confined if requested by the department of human services.

c. To a medical, psychological, or psychiatric evaluation. A person shall not be transported to another facility for evaluation without a court order. When a transportation order is requested under this paragraph, notice must be provided to the opposing party, and the opposing party must be given a reasonable amount of time to object to the issuance of such an order. The cost of the transportation shall be paid by the party who requests the order.

d. To a facility for placement or treatment in a transitional release program or for release with or without supervision. A transport order is not required under this paragraph.

2. This section shall not be construed to grant a person the right to personally appear at all court proceedings under this chapter.

Sec. 8. Section 229A.7, subsection 2, Code 2001, is amended to read as follows:

2. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

2A. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. The

~~number-and-selection-of-jurors-shall-be-determined-as-provided in-chapter-607A.~~ If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

Sec. 9. Section 229A.7, subsections 3, 4, and 5, Code 2001, are amended to read as follows:

3. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. ~~If the determination-that-the-respondent-is-a-sexually-violent-predator-is-made-by-a-jury, the~~ determination case is before a jury, the verdict shall be by unanimous verdict of such jury that the respondent is a sexually violent predator.

If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at-large placed in a transitional release program or discharged. The determination may be appealed.

4. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or

other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the confinement custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

5. If the court makes the determination or the jury is not satisfied-beyond-a-reasonable-doubt determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 2.

Sec. 10. Section 229A.8, Code 2001, is amended to read as follows:

229A.8 ANNUAL EXAMINATIONS, AND REVIEW -- DISCHARGE OR TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

1- 2. Each A person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

2- 3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and probable-cause, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

3- 4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the probable cause-hearing annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge over-the-director's-objection or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

4- 5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person at-the-probable-cause-hearing but the person is not entitled to be present at the hearing, if a hearing is held. If-the-court-at-the-hearing-determines that-probable-cause-exists-to-believe-that-the-person's

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney

for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. The burden is on the committed person to show by a preponderance of the evidence that there is competent evidence which would lead a reasonable person to believe a final hearing should be held to determine either of the following:

(1) The mental abnormality of the committed person has so changed that the person is safe-to-be-at-large-and-will not likely to engage in predatory acts or constituting sexually violent offenses if discharged, then the court shall set a final hearing on the issue.

(2) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1) or (2), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional

release program, the state shall have the right to demand that both determinations in paragraph "e" be submitted to the court or jury.

5- 6. At-the-final-hearing,-the The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to be-present an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The attorney-general-shall-represent the-state-and-shall-have-a-right-to-a-jury-trial-and-to-have the-committed-person-evaluated-by-experts-chosen-by-the-state committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall also have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt that-the either of the following:

(1) The committed person's mental abnormality or personality-disorder remains such that the person is-not-safe to-be-at-large-and-if-discharged is likely to engage in acts of-sexual-violence predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director

has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

Sec. 11. NEW SECTION. 229A.8A TRANSITIONAL RELEASE.

1. The department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.

2. A committed person is suitable for placement in the transitional release program if the court finds that all of the following apply:

a. The committed person's mental abnormality is no longer such that the person is a high risk to reoffend.

b. The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

c. The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

d. A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history.

e. No major discipline reports have been issued for the committed person for a period of six months.

f. The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

g. The committed person is not likely to commit acts constituting sexually violent offenses while in the program.

h. The placement is in the best interest of the committed person.

1. The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

3. If the committed person does not agree to the conditions of release, the person is not eligible for the transitional release program.

4. For purposes of registering as a sex offender under chapter 692A, a person placed in the transitional release program shall be classified a "high-risk" sex offender and public notification shall be as provided in section 692A.13A, subsection 2. A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

5. Committed persons in the transitional release program are not necessarily required to be segregated from other persons.

6. The department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on confinement and the movement of committed persons, and for assessing the progress of committed persons in the program. The court may also impose conditions on a committed person placed in the program.

7. The department of human services may contract with other government or private agencies, including the department of corrections, to implement and administer the transitional release program.

Sec. 12. NEW SECTION. 229A.8B VIOLATIONS OF TRANSITIONAL RELEASE.

1. The treatment staff in a transitional release program may remove the committed person from the program for a violation of any rule or directive, and return the person to a secure facility. The treatment staff may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the committed person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile

copy of the original request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person absconds from a transitional release program in violation of the rules or directives, a presumption arises that the person poses a risk to public safety. The department of human services, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the person is in transitional release from the sexually violent predator program, and any other information important to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the absconder has been returned to a secure facility, and the court shall set a hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the rules or directives occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned from the transitional release program to a secure facility.

4. At the hearing the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the rules or directives occurred. The hearing shall be to the court.

5. If the court determines a violation occurred, the court shall either order the committed person to be returned to the transitional release program or to be confined in a secure facility. The court may impose further conditions upon the committed person if returned to the transitional release program. If the court determines no violation occurred, the committed person shall be returned to the transitional release program.

Sec. 13. NEW SECTION. 229A.9A RELEASE WITH OR WITHOUT SUPERVISION.

1. In any proceeding under section 229A.8, the court may order the committed person released with or without supervision if any of the following apply:

a. The attorney general stipulates to the release with or without supervision.

b. The court or jury has determined that the person should be discharged from the program, but the court has determined it is in the best interest of the community to order release with or without supervision before the committed person is discharged.

2. If release with or without supervision is ordered, the department of human services shall prepare within thirty days of the order of the court a release plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug abuse treatment, sex offender treatment, or any other treatment or supervision necessary.

3. The court shall set a hearing on the release plan prepared by the department of human services before the committed person is released from a secure facility or a transitional release program.

4. If the court orders release with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the placement of criminal offenders in the community. The agency with jurisdiction shall be responsible for initiating proceedings for violations of the release plan as provided in section 229A.9B. If the court orders release without supervision, the agency with jurisdiction shall also be responsible for initiating proceedings for any violations of the release plan as provided in section 229A.9B.

5. A committed person may not petition the court for release with or without supervision.

6. A committed person released with or without supervision is not considered discharged from civil commitment under this chapter.

7. After being released with or without supervision, the person may petition the court for discharge as provided in section 229A.8.

8. The court shall retain jurisdiction over the committed person who has been released with or without supervision until the person is discharged from the program. The department of human services shall not be held liable for any acts committed by a committed person who has been ordered released with or without supervision.

Sec. 14. NEW SECTION. 229A.9B VIOLATIONS OF RELEASE WITH OR WITHOUT SUPERVISION.

1. If a committed person violates the release plan, the agency with jurisdiction over the person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person has absconded in violation of the conditions of the person's release plan, a presumption arises that the person poses a risk to public safety. The department of human services or contracting agency, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the committed person is on release with or without supervision from the sexually violent predator program, and any other information pertinent to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the committed person has been returned to a secure facility, and the court shall set hearing within five days to determine if a violation occurred. If a court order was not

issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the conditions of the release plan occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned to a secure facility.

4. At the hearing the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the release plan occurred.

5. If the court determines a violation occurred, the court shall receive release recommendations from the department of human services and either order that the committed person be returned to release with or without supervision or placed in a transitional release program, or be confined in a secure facility. The court may impose further conditions upon the committed person if returned to release with or without supervision or placed in the transitional release program. If the court determines no violation occurred, the committed person shall be returned to release with or without supervision.

Sec. 15. Section 229A.10, Code 2001, is amended to read as follows:

229A.10 PETITION FOR DISCHARGE -- PROCEDURE.

1. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The If the attorney general objects to the petition for discharge, the burden of proof shall be upon the attorney

general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner ~~is not safe to be at large and that if discharged~~ is likely to commit engage in predatory acts ~~or sexually violent that constitute sexually violent offenses if discharged~~.

2. Upon a finding that the state has failed to meet its burden of proof under this section, ~~or a stipulation by the state~~, the court shall authorize the ~~release of~~ the committed person to be discharged. ~~Release may be ordered with or without supervision; if supervised release is ordered, the department of human services shall prepare a plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol and other drug abuse treatment, and any other treatment or supervision necessary; if the court orders the release of the committed person with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the placement of criminal offenders in the community.~~

Sec. 16. Section 229A.11, Code 2001, is amended to read as follows:

229A.11 SUBSEQUENT DISCHARGE PETITIONS, -- LIMITATIONS.

Nothing in this chapter shall prohibit a person from filing a petition for discharge or placement in a transitional release program, pursuant to this chapter. However, if a person has previously filed a petition for discharge or for placement in a transitional release program without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large not likely to engage in predatory acts constituting sexually violent offenses if discharged, or was not suitable for placement in the transitional release program, then the court shall summarily deny the subsequent petition unless the petition contains facts upon which a court

could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court determines that a petition is frivolous, the court shall deny dismiss the petition without a hearing.

Sec. 17. Section 229A.12, Code 2001, is amended to read as follows:

229A.12 DIRECTOR OF HUMAN SERVICES -- RESPONSIBILITY FOR COSTS -- REIMBURSEMENT.

The director of human services shall be responsible for all costs relating to the evaluation, treatment, and services provided to persons a person that are incurred after the person is committed to the director's custody after the court or jury determines that the respondent is a sexually violent predator and pursuant to commitment under any provision of this chapter. If placement in a transitional release program or supervision is ordered pursuant to ~~section 229A.10~~, the director shall also be responsible for all costs related to the transitional release program or to the supervision and treatment of any person. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of confinement, or of care and treatment provided. As used in this section, "any person legally liable" does not include a political subdivision.

Sec. 18. NEW SECTION. 229A.12A DIRECTOR OF THE DEPARTMENT OF CORRECTIONS -- RESPONSIBILITY FOR SAFEKEEPER.

The director of the department of corrections shall have authority, once a person is detained pursuant to section 229A.5, to make a determination as to the appropriate secure facility within the department of corrections in which the safekeeper is to be placed, taking into consideration the safekeeper's medical needs and ability to interact with offenders who have been committed to the custody of the

director of the department of corrections. The director has authority to determine the safekeeper's degree of segregation from offenders, including whether total segregation is appropriate under the circumstances or whether the safekeeper should be permitted to participate in normal confinement activities in the presence of offenders.

Sec. 19. Section 229A.14, Code 2001, is amended to read as follows:

229A.14 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

Notwithstanding ~~anything in chapter 22 to the contrary~~, any provision in the Code regarding confidentiality to the contrary, any relevant information and records which would otherwise be confidential or privileged, except information subject to attorney-client privilege and attorney work product, shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 229A.3 and determining whether a person is or continues to be a sexually violent predator.

Sec. 20. NEW SECTION. 229A.15A CIVIL PROTECTIVE ORDER.

A victim of a crime that was committed before the filing of a petition under this chapter by a safekeeper or by a person subjected to an order of civil commitment pursuant to this chapter, may obtain a protective order against the safekeeper or person using the procedures set out in section 915.22.

Sec. 21. NEW SECTION. 229A.15B RULEMAKING AUTHORITY.

The department of human services shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

Sec. 22. Section 811.1, subsections 1 and 2, Code 2001, are amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any

felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent offense under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

2. A defendant appealing a conviction of a class "A" felony; murder; any class "B" or "C" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent conviction under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

Sec. 23. Section 901A.1, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 3. As used in this chapter, the term "sexually violent offense" means the same as defined in section 229A.2.

Sec. 24. Section 901A.2, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. A person who has been placed in a transitional release program, released with or without supervision, or discharged pursuant to chapter 229A, and who is subsequently convicted of a sexually predatory offense or a sexually violent offense, shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection. However, if

the person commits a sexually violent offense which is a misdemeanor offense under chapter 709, the person shall be sentenced to life in prison, with eligibility for parole as provided in chapter 906.

Sec. 25. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Sec. 26. DIRECTIVE TO CODE EDITOR. The Code editor is directed to renumber sections in chapter 229A and correct internal references as necessary in conjunction with the enactment of this Act.

Sec. 27. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2286, Seventy-ninth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved April 30, 2002

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THOMAS J. VILSACK  
Governor