



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Dan Brady

SYNOPSIS AS INTRODUCED:

725 ILCS 205/9

from Ch. 38, par. 105-9

Amends the Sexually Dangerous Persons Act. Provides that at the hearing to determine whether a sexually dangerous person or criminal sexual psychopathic person has recovered, the Attorney General or State's Attorney who filed the original application shall represent the State and shall have the right to have the applicant examined by an expert or professional person of the State's choice. Provides that the applicant may retain experts to perform an examination as well. Provides that the sexually dangerous person or the State may elect to have the hearing before a jury. Provides that the State has the burden of proving by clear and convincing evidence that the applicant is still a sexually dangerous person. Provides that if the applicant is indigent, the court shall, upon request of the applicant, appoint a qualified and available expert to perform an evaluation. Provides that if the applicant refuses to speak to, communicate with, or otherwise fails to cooperate with the State's examiner, the applicant may only introduce evidence and testimony from any expert or professional person who is retained or court appointed to conduct an examination based upon review of the records and may not introduce evidence resulting from an examination of the person. Provides that if a person has previously filed an application in writing setting forth facts showing that the sexually dangerous person or criminal sexual psychopathic person has recovered and the court determined either at a hearing or following a jury trial that the applicant is still a sexually dangerous person, no additional application may be filed for one year after a finding that the person is still sexually dangerous. Makes other changes.

LRB093 19872 RLC 45615 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning sexually dangerous persons.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Sexually Dangerous Persons Act is amended by
5 changing Section 9 as follows:

6 (725 ILCS 205/9) (from Ch. 38, par. 105-9)

7 Sec. 9. Recovery; examination and hearing.

8 (a) An application in writing setting forth facts showing
9 that such sexually dangerous person or criminal sexual
10 psychopathic person has recovered may be filed before the
11 committing court. Upon receipt thereof, the clerk of the court
12 shall cause a copy of the application to be sent to the
13 Director of the Department of Corrections. The Director shall
14 then cause to be prepared and sent to the court a
15 socio-psychiatric report concerning the applicant. The report
16 shall be prepared by a social worker and psychologist under the
17 supervision of a licensed psychiatrist assigned to^r the
18 institution wherein such applicant is confined. The court shall
19 set a date for the hearing upon such application and shall
20 consider the report so prepared under the direction of the
21 Director of the Department of Corrections and any other
22 relevant information submitted by or on behalf of such
23 applicant.

24 (b) At a hearing under this Section, the Attorney General
25 or State's Attorney who filed the original application shall
26 represent the State and shall have the right to have the
27 applicant examined by an expert or professional person of the
28 State's choice. The applicant may retain experts to perform an
29 examination as well. The sexually dangerous person or the State
30 may elect to have the hearing before a jury. The State has the
31 burden of proving by clear and convincing evidence that the
32 applicant is still a sexually dangerous person.

1 (c) If the applicant is indigent, the court shall, upon
2 request of the applicant, appoint a qualified and available
3 expert to perform an evaluation. If the applicant refuses to
4 speak to, communicate with, or otherwise fails to cooperate
5 with the State's examiner, the applicant may only introduce
6 evidence and testimony from any expert or professional person
7 who is retained or court appointed to conduct an examination
8 based upon review of the records and may not introduce evidence
9 resulting from an examination of the person. Notwithstanding
10 the provisions of Section 10 of the Mental Health and
11 Developmental Disabilities Confidentiality Act, all
12 evaluations conducted under this Act and all Illinois
13 Department of Corrections treatment records shall be
14 admissible at all proceedings held under this Act.

15 (d) If a person has previously filed an application in
16 writing setting forth facts showing that the sexually dangerous
17 person or criminal sexual psychopathic person has recovered and
18 the court determined either at a hearing or following a jury
19 trial that the applicant is still a sexually dangerous person,
20 no additional application may be filed for one year after a
21 finding that the person is still sexually dangerous. The court
22 shall deny any subsequent application under this Section
23 without a hearing unless the application is accompanied by a
24 statement from the Director that the applicant is attending
25 treatment and contains facts upon which a court could find that
26 the condition of the person had so changed that a hearing is
27 warranted. If the court finds that a hearing is warranted, the
28 court shall set a hearing within a reasonable time and continue
29 proceedings under subsection (a).

30 (e) If the person is found to be no longer dangerous, the
31 court shall order that he be discharged. If the court finds
32 that the person appears no longer to be dangerous but that it
33 is impossible to determine with certainty under conditions of
34 institutional care that such person has fully recovered, the
35 court shall enter an order permitting such person to go at
36 large subject to such conditions and such supervision by the

1 Director as in the opinion of the court will adequately protect
2 the public. In the event the person violates any of the
3 conditions of such order, the court shall revoke such
4 conditional release and recommit the person pursuant to Section
5 5-6-4 of the Unified Code of Corrections under the terms of the
6 original commitment. Upon an order of discharge every
7 outstanding information and indictment, the basis of which was
8 the reason for the present detention, shall be quashed.

9 (Source: P.A. 92-786, eff. 8-6-02; revised 10-9-03.)