



Sen. Don Harmon

Filed: 4/27/2004

09300HB7057sam002

LRB093 18519 RLC 49967 a

1 AMENDMENT TO HOUSE BILL 7057

2 AMENDMENT NO. _____. Amend House Bill 7057, AS AMENDED, by
3 replacing the introductory clause of Section 5 with the
4 following:

5 "Section 5. The Sexually Violent Persons Commitment Act is
6 amended by changing Sections 25 and 30 as follows:

7 (725 ILCS 207/25)

8 Sec. 25. Rights of persons subject to petition.

9 (a) Any person who is the subject of a petition filed under
10 Section 15 of this Act shall be served with a copy of the
11 petition in accordance with the Civil Practice Law.

12 (b) The circuit court in which a petition under Section 15
13 of this Act is filed shall conduct all hearings under this Act.
14 The court shall give the person who is the subject of the
15 petition reasonable notice of the time and place of each such
16 hearing. The court may designate additional persons to receive
17 these notices.

18 (c) Except as provided in paragraph (b)(1) of Section 65
19 and Section 70 of this Act, at any hearing conducted under this
20 Act, the person who is the subject of the petition has the
21 right ~~to~~:

22 (1) To be present and to be represented by counsel. If
23 the person is indigent, the court shall appoint counsel.

24 (2) To remain silent.

1 (3) To present and cross-examine witnesses.

2 (4) To have the hearing recorded by a court reporter.

3 (d) The person who is the subject of the petition, the
4 person's attorney, the Attorney General or the State's Attorney
5 may request that a trial under Section 35 of this Act be to a
6 jury. A verdict of a jury under this Act is not valid unless it
7 is unanimous.

8 (e) Whenever the person who is the subject of the petition
9 is required to submit to an examination under this Act, he or
10 she may retain experts or professional persons to perform an
11 examination. ~~The respondent's chosen evaluator must be~~
12 ~~approved by the Sex Offender Management Board and the~~
13 ~~evaluation must be conducted in conformance with the standards~~
14 ~~developed under the Sex Offender Management Board Act.~~ If the
15 person retains a qualified expert or professional person of his
16 or her own choice to conduct an examination, the examiner shall
17 have reasonable access to the person for the purpose of the
18 examination, as well as to the person's past and present
19 treatment records and patient health care records. If the
20 person is indigent, the court shall, upon the person's request,
21 appoint a qualified and available expert or professional person
22 to perform an examination. Upon the order of the circuit court,
23 the county shall pay, as part of the costs of the action, the
24 costs of a court-appointed expert or professional person to
25 perform an examination and participate in the trial on behalf
26 of an indigent person.

27 (Source: P.A. 93-616, eff. 1-1-04; revised 1-10-04.)

28 (725 ILCS 207/30)

29 Sec. 30. Detention; probable cause hearing; transfer for
30 examination.

31 (a) Upon the filing of a petition under Section 15 of this
32 Act, the court shall review the petition to determine whether
33 to issue an order for detention of the person who is the

1 subject of the petition. The person shall be detained only if
2 there is cause to believe that the person is eligible for
3 commitment under subsection (f) of Section 35 of this Act. A
4 person detained under this Section shall be held in a facility
5 approved by the Department. If the person is serving a sentence
6 of imprisonment, is in a Department of Corrections correctional
7 facility or juvenile correctional facility or is committed to
8 institutional care, and the court orders detention under this
9 Section, the court shall order that the person be transferred
10 to a detention facility approved by the Department. A detention
11 order under this Section remains in effect until the person is
12 discharged after a trial under Section 35 of this Act or until
13 the effective date of a commitment order under Section 40 of
14 this Act, whichever is applicable.

15 (b) Whenever a petition is filed under Section 15 of this
16 Act, the court shall hold a hearing to determine whether there
17 is probable cause to believe that the person named in the
18 petition is a sexually violent person. If the person named in
19 the petition is in custody, the court shall hold the probable
20 cause hearing within 72 hours after the petition is filed,
21 excluding Saturdays, Sundays and legal holidays. The court may
22 grant a continuance of the probable cause hearing for no more
23 than 7 additional days upon the motion of the respondent, for
24 good cause. If the person named in the petition has been
25 released, is on parole, is on mandatory supervised release, or
26 otherwise is not in custody, the court shall hold the probable
27 cause hearing within a reasonable time after the filing of the
28 petition. At the probable cause hearing, the court shall admit
29 and consider all relevant hearsay evidence.

30 (c) If the court determines after a hearing that there is
31 probable cause to believe that the person named in the petition
32 is a sexually violent person, the court shall order that the
33 person be taken into custody if he or she is not in custody and
34 shall order the person to be transferred within a reasonable

1 time to an appropriate facility for an evaluation as to whether
2 the person is a sexually violent person. If the person who is
3 named in the petition refuses to speak to, communicate with, or
4 otherwise fails to cooperate with the examining evaluator from
5 the Department of Human Services or the Department of
6 Corrections, that person may only introduce evidence and
7 testimony from any expert or professional person who is
8 retained or court-appointed to conduct an examination of the
9 person that results from a review of the records and may not
10 introduce evidence resulting from an examination of the person.
11 ~~Any evaluation conducted under this Section shall be by an~~
12 ~~evaluator approved by the Sex Offender Management Board and~~
13 ~~conducted in conformance with the standards developed under the~~
14 ~~Sex Offender Management Board Act.~~ Notwithstanding the
15 provisions of Section 10 of the Mental Health and Developmental
16 Disabilities Confidentiality Act, all evaluations conducted
17 pursuant to this Act and all Illinois Department of Corrections
18 treatment records shall be admissible at all proceedings held
19 pursuant to this Act, including the probable cause hearing and
20 the trial.

21 If the court determines that probable cause does not exist
22 to believe that the person is a sexually violent person, the
23 court shall dismiss the petition.

24 (d) The Department shall promulgate rules that provide the
25 qualifications for persons conducting evaluations under
26 subsection (c) of this Section.

27 (e) If the person named in the petition claims or appears
28 to be indigent, the court shall, prior to the probable cause
29 hearing under subsection (b) of this Section, appoint counsel.

30 (Source: P.A. 92-415, eff. 8-17-01; 93-616, eff. 1-1-04.)

31 Section 10. The Unified Code of Corrections is amended by
32 changing Sections 5-3-1, 5-3-2, 5-6-3, and 5-6-3.1 as follows:

1 (730 ILCS 5/5-3-1) (from Ch. 38, par. 1005-3-1)

2 Sec. 5-3-1. Presentence Investigation. A defendant shall
3 not be sentenced for a felony before a written presentence
4 report of investigation is presented to and considered by the
5 court.

6 However, other than for felony sex offenders being
7 considered for probation ~~in cases other than felony sex~~
8 ~~offenses as defined in the Sex Offender Management Board Act,~~
9 the court need not order a presentence report of investigation
10 where both parties agree to the imposition of a specific
11 sentence, provided there is a finding made for the record as to
12 the defendant's history of delinquency or criminality,
13 including any previous sentence to a term of probation,
14 periodic imprisonment, conditional discharge, or imprisonment.

15 The court may order a presentence investigation of any
16 defendant.

17 (Source: P.A. 93-616, eff. 1-1-04.)

18 (730 ILCS 5/5-3-2) (from Ch. 38, par. 1005-3-2)

19 Sec. 5-3-2. Presentence Report.

20 (a) In felony cases, the presentence report shall set
21 forth:

22 (1) the defendant's history of delinquency or
23 criminality, physical and mental history and condition,
24 family situation and background, economic status,
25 education, occupation and personal habits;

26 (2) information about special resources within the
27 community which might be available to assist the
28 defendant's rehabilitation, including treatment centers,
29 residential facilities, vocational training services,
30 correctional manpower programs, employment opportunities,
31 special educational programs, alcohol and drug abuse
32 programming, psychiatric and marriage counseling, and
33 other programs and facilities which could aid the

1 defendant's successful reintegration into society;

2 (3) the effect the offense committed has had upon the
3 victim or victims thereof, and any compensatory benefit
4 that various sentencing alternatives would confer on such
5 victim or victims;

6 (4) information concerning the defendant's status
7 since arrest, including his record if released on his own
8 recognizance, or the defendant's achievement record if
9 released on a conditional pre-trial supervision program;

10 (5) when appropriate, a plan, based upon the personal,
11 economic and social adjustment needs of the defendant,
12 utilizing public and private community resources as an
13 alternative to institutional sentencing;

14 (6) any other matters that the investigatory officer
15 deems relevant or the court directs to be included; and

16 (7) information concerning defendant's eligibility for
17 a sentence to a county impact incarceration program under
18 Section 5-8-1.2 of this Code.

19 (b) The investigation shall include a physical and mental
20 examination of the defendant when so ordered by the court. If
21 the court determines that such an examination should be made,
22 it shall issue an order that the defendant submit to
23 examination at such time and place as designated by the court
24 and that such examination be conducted by a physician,
25 psychologist or psychiatrist designated by the court. Such an
26 examination may be conducted in a court clinic if so ordered by
27 the court. The cost of such examination shall be paid by the
28 county in which the trial is held.

29 (b-5) In cases involving felony sex offenses in which the
30 offender is being considered for probation or any felony
31 offense that is sexually motivated as defined in the Sex
32 Offender Management Board Act in which the offender is being
33 considered for probation, the investigation shall include a sex
34 offender evaluation by an evaluator approved by the Board and

1 conducted in conformance with the standards developed under the
2 Sex Offender Management Board Act.

3 (c) In misdemeanor, business offense or petty offense
4 cases, except as specified in subsection (d) of this Section,
5 when a presentence report has been ordered by the court, such
6 presentence report shall contain information on the
7 defendant's history of delinquency or criminality and shall
8 further contain only those matters listed in any of paragraphs
9 (1) through (6) of subsection (a) or in subsection (b) of this
10 Section as are specified by the court in its order for the
11 report.

12 (d) In cases under Section 12-15 and Section 12-30 of the
13 Criminal Code of 1961, as amended, the presentence report shall
14 set forth information about alcohol, drug abuse, psychiatric,
15 and marriage counseling or other treatment programs and
16 facilities, information on the defendant's history of
17 delinquency or criminality, and shall contain those additional
18 matters listed in any of paragraphs (1) through (6) of
19 subsection (a) or in subsection (b) of this Section as are
20 specified by the court.

21 (e) Nothing in this Section shall cause the defendant to be
22 held without bail or to have his bail revoked for the purpose
23 of preparing the presentence report or making an examination.

24 (Source: P.A. 93-616, eff. 1-1-04.)".