



Sen. Don Harmon

**Filed: 5/5/2004**

09300HB7057sam003

LRB093 18519 WGH 50574 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, 5-3-4, 5-4-3.1, 5-6-3, and  
33 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

1 other programs and facilities which could aid the  
2 defendant's successful reintegration into society;

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

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

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

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

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

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

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

1 offender evaluation by an evaluator approved by the Board and  
2 conducted in conformance with the standards developed under the  
3 Sex Offender Management Board Act.

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

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

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

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

26 (730 ILCS 5/5-3-4) (from Ch. 38, par. 1005-3-4)

27 Sec. 5-3-4. Disclosure of Reports.

28 (a) Any report made pursuant to this Article or Section  
29 5-705 of the Juvenile Court Act of 1987 shall be filed of  
30 record with the court in a sealed envelope.

31 (b) Presentence reports shall be open for inspection only  
32 as follows:

33 (1) to the sentencing court;

1           (2) to the state's attorney and the defendant's  
2 attorney at least 3 days prior to the imposition of  
3 sentence, unless such 3 day requirement is waived;

4           (3) to an appellate court in which the conviction or  
5 sentence is subject to review;

6           (4) to any department, agency or institution to which  
7 the defendant is committed;

8           (5) to any probation department of whom courtesy  
9 probation is requested;

10          (6) to any probation department assigned by a court of  
11 lawful jurisdiction to conduct a presentence report;

12          (7) to any other person only as ordered by the court;  
13 and

14          (8) to any mental health professional on behalf of the  
15 Illinois Department of Corrections or the Department of  
16 Human Services or to a prosecutor who is evaluating or  
17 investigating a potential or actual petition brought under  
18 the Sexually Violent Persons Commitment Act relating to a  
19 person who is the subject of a presentence report or the  
20 respondent to a petition brought under the Sexually Violent  
21 Persons Commitment Act who is the subject of the  
22 presentence report sought. Any records and any information  
23 obtained from those records under this paragraph (8) may be  
24 used only in sexually violent persons commitment  
25 proceedings.

26          (c) Presentence reports shall be filed of record with the  
27 court within 60 ~~30~~ days of a verdict or finding of guilty for  
28 any offense involving an illegal sexual act perpetrated upon a  
29 victim, including but not limited to offenses for violations of  
30 Article 12 of the Criminal Code of 1961, or any offense  
31 determined by the court or the probation department to be  
32 sexually motivated, as defined in the Sex Offender Management  
33 Board Act.

34          (d) A complaint, information or indictment shall not be



1 quashed or dismissed nor shall any person in custody for an  
2 offense be discharged from custody because of noncompliance  
3 with subsection (c) of this Section.

4 (Source: P.A. 92-415, eff. 8-17-01.)

5 (730 ILCS 5/5-4-3.1) (from Ch. 38, par. 1005-4-3.1)

6 Sec. 5-4-3.1. Sentencing Hearing for Sex Offenses.

7 (a) Except for good cause shown by written motion, any  
8 person adjudged guilty of any offense involving an illegal  
9 sexual act perpetrated upon a victim, including but not limited  
10 to offenses for violations of Article 12 of the Criminal Code  
11 of 1961, or any offense determined by the court or the  
12 probation department to be sexually motivated, as defined in  
13 the Sex Offender Management Board Act, shall be sentenced  
14 within 65 ~~45~~ days of a verdict or finding of guilt for the  
15 offense.

16 (b) The court shall set the sentencing date at the time the  
17 verdict or finding of guilt is entered by the court.

18 (c) Any motion for continuance shall be in writing and  
19 supported by affidavit and in compliance with Section 114-4 of  
20 the Code of Criminal Procedure of 1963, and the victim shall be  
21 notified of the date and time of hearing and shall be provided  
22 an opportunity to address the court on the impact the  
23 continuance may have on the victim's well-being.

24 (d) A complaint, information or indictment shall not be  
25 quashed or dismissed, nor shall any person in custody for an  
26 offense be discharged from custody because of non-compliance  
27 with this Section.

28 (Source: P.A. 87-900.)".