

CIVIL COMMITMENT OVERVIEW

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Sexually Dangerous Persons

Statute 725 ILCS 205

Works as a parallel prosecution-action usually brought by the State's Attorney's office in county where person is charged with a sex offense or the State's Attorney may file a SDP petition instead of charging the person with a sex offense. The Attorney General may also file a SDP case.

Definition at 725 ILCS 205/1.01

All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year immediately prior to the filing of the Petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities towards acts of sexual assault or acts of sexual molestation of children are declared Sexually dangerous persons.

Court appoints two experts. Parties usually submit names of experts and the Court picks one from each side's recommendations. Experts can be a psychiatrist or a psychologist. Experts will submit a report to the court.

Civil rules of procedure apply, but case must be proven beyond a reasonable doubt.

Defendant in a SDP petition has the right to a jury.

If defendant is found to be SDP, he is committed to the Department of Corrections. The Department of Corrections has the duty to provide sex offender treatment.

Defendant can file for Recovery asking that the court find that he is no longer a Sexually Dangerous Person.

The Director of IDOC may ask the court to conditionally release the defendant, if it cannot be determined that the defendant has recovered within the confines of the institution.

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Sexually Violent Persons

Statute 725 ILCS 207

Commits a convicted sex offender to the Department of Human Services for care and treatment after he or she has served their sentence in the Department of Corrections. The State's Attorney's Office or the Attorney General's Office may file a petition to commit a person as a Sexually Violent Person. The Petition may be filed in the county for which the person has been convicted of a sexually violent offense or may be filed in the county where the person is detained.

Definition at 725 ILCS 207/15(b)

- Person has been convicted of a sexually violent offense
 - Not dictionary definition of violent (see 207/5)
 - Could be an Attempt
 - Could be NGRI or a juvenile conviction

- Person has a mental disorder
 - Legal vs. DSM

- Person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

- Substantially probable means much more likely than not

- In Re Bailey 740 N.E. 2d 1146 (1st Dist. 2000)

- In Re Hayes 474 N.E.2d 444 (2nd Dist. 2001)

Person evaluated by "agency with jurisdiction" see 207/10

- Person usually evaluated by a psychologist that works for IDOC

- State's Attorney or Attorney General may hire an expert to evaluate a person

If the IDOC evaluator or the evaluator hired by the AG's or State's Attorney expert opines that the person meets the criteria to be found sexually violent a petition is filed.

Opinion and comprehensive evaluation (see 207/10 (c) (2) are contained in a report.

Report is attached to petition

Rights of SVP respondents

- Right to remain silent

- Right to attorney

- Right to court reported proceedings

- Right to present and cross examine witnesses

Civil Rules of discovery apply, but case must be proven beyond a reasonable doubt

Both the State and the Respondent have a right to a jury but must file a jury demand

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Probable Cause Hearing

When the petition is filed, Court issues a detention order preventing the persons release from IDOC

Person is brought to court for a hearing to determine if there is probable cause to believe the person is sexually violent

Hearing is in 72 hours from time of filing unless waived by respondent

If the court finds probable cause, the case is held over for discovery and trial.

If the court finds probable cause, custody is transferred to the Department of Human Services and DHS is ordered to complete an evaluation as to whether or not the person meets the criteria to be found SVP.

If the court finds probable cause the court may order that an expert be appointed for the Respondent

If the court finds there is no probable cause the case is dismissed and the Respondent is discharged

Trial

State may call the IDOC evaluator, DHS evaluator and their own evaluator if one was hired

Respondent may call the evaluator he hired or was appointed.

Respondent may call IDOC or DHS evaluator if they opined he was not SVP

Respondent may testify

If the Respondent is found to be SVP he is committed to the care, custody and control of the Department of Human Services

Post Commitment

Disposition

After trial, Judge decides if the Respondent shall receive inpatient secure treatment or treatment in the community on community release
Court could decide immediately after trial or order a dispositional evaluation

What the court must consider when determining whether the Respondent shall be treated inpatient or in the community on Conditional Release see 207/40 (b) (2)

The facts and circumstances of the behavior outlined in the petition
Persons past and present mental condition

What arrangements can be made to ensure the person will have access to and will participate in necessary treatment

Periodic Review

DHS must provide a written report of evaluation annually to the court see 207/55

Evaluation must consider two things:

1. Is the person still a sexually violent person?
2. Has the person made sufficient progress in treatment so that he is no longer substantially probable to re-offend if in the community on conditional release?

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Respondent is entitled to petition for discharge, he may waive that right as part of the periodic review. Waiver means he agrees he is still sexually violent and cannot petition for discharge until the next review period.

Conditional Release see 207/60

Respondent may file for Conditional Release 12 months after the last Court finding that they are not appropriate for Conditional release.

Respondent may ask for a court appointed evaluator at that time.

State has the right to hire its own evaluator if the DHS evaluator opines that the person is appropriate for conditional release

Judge will determine after a hearing whether the person is appropriate for conditional release.

The State has the burden of proving by clearing and convincing evidence that the person is substantially probable to re-offend if in the community on conditional release.

Discharge see 207/65

Respondent may file for Discharge 12 months after the last finding they remain sexually violent.

Respondent may ask for a court appointed evaluator at that time.

State has the right to hire its own evaluator if the DHS evaluator opines that the person is no longer sexually violent.

Respondent and State may file a jury demand. Judge or jury may determine discharge

The state has the burden of proving by clear and convincing evidence that the person is no longer sexually violent .

Evaluation Standards

SOMB 20 ILCS 4026

IDFPR 68 Ill. Adm. Code Ch. VII Subch. B. Pt. 1280

Adult Sex Offender Evaluation and Treatment

60 Ill. Adm. Code. Ch. VII Pt. 1905

Issues with Evaluation Standards and Court

Know that there are standards that have been codified into law

Generally **NEVER** come up but you never know what may happen in court

You are the expert – you know more about the ATSA guidelines for practice than the attorneys do.

Know the underlying purpose of the evaluation

Is the person SVP?

Have they made substantial progress to be conditionally release?

Are they no longer sexually violent?

Couple of common questions that could be answered by knowing the standards

20 adm code 1905.50 assessment guidelines section e

Potential involvement of adult victims- evaluator not to contact victim

20 adm code 1905.150 PPG and Polygraph

Polygraph and PPG not to be sole criteria for recommending release