

# SENATE . . . . . No. 217

By Ms. Walsh, a petition (accompanied by bill, Senate, No. 217) of Marian Walsh, Marc R. Pacheco, James P. Jajuga, Richard T. Moore, other members of the General Court and Kevin M. Burke, District Attorney for the Eastern District, for legislation relative to sexually dangerous persons. Criminal Justice.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

### AN ACT RELATIVE TO SEXUALLY DANGEROUS PERSONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 265 of the General Laws, as appearing in  
2 the 1994 Official Edition, is hereby amended by inserting after  
3 section 24C the following section:—

4 Section 24D. Whoever is convicted of indecent assault and bat-  
5 tery on a child under fourteen under the provisions of section thir-  
6 teen B of chapter two hundred and sixty-five; indecent assault and  
7 battery on a mentally retarded person under the provisions of sec-  
8 tion thirteen F of chapter two hundred and sixty-five; indecent  
9 assault and battery on a person who has obtained the age of four-  
10 teen under the provisions of section thirteen H of chapter two hun-  
11 dred and sixty-five; rape under the provisions of section  
12 twenty-two of chapter two hundred and sixty-five; rape of a child  
13 under sixteen with force under the provisions of section twenty-  
14 two A of chapter two hundred and sixty-five; rape and abuse of a  
15 child under sixteen under the provisions of section twenty-three of  
16 chapter two hundred and sixty-five; assault with intent to commit  
17 rape under the provisions of section twenty-four of chapter two  
18 hundred and sixty-five; and any attempt to commit any of the  
19 above listed crimes under the provisions of section six of chapter  
20 two hundred and seventy-four, having been before convicted or  
21 adjudicated delinquent of any of the above offenses, or of any  
22 other offense of any other jurisdiction, federal, state or territorial,  
23 which is the same as or necessarily includes the elements of any

24 one a more of the above offenses, shall be imprisoned in the state  
25 prison for life.

1 SECTION 2. Chapter 123A of the General laws, as appearing  
2 in the 1994 Official Edition, and most recently amended by  
3 Chapter 489 of the Acts of 1993, is hereby further amended by  
4 inserting the following sections:—

5 Section 3. (a) Within six months prior to a prisoner's eligibility  
6 for parole or six months prior to a youth's discharge date from the  
7 department of youth services, the sheriff, keeper, master or super-  
8 intendent of a jail, house of correction or prison and the director of  
9 a custodial facility of the department of youth services, shall  
10 notify in writing the district attorney of the county where the  
11 offense occurred and the attorney general of the impending release  
12 of any person within their custody who has been convicted or  
13 adjudicated delinquent of a sexual offense, as defined in section 1  
14 of this chapter.

15 (b) When it appears that the prisoner (b) youth in the custody of  
16 the department of youth services may be a sexually dangerous  
17 person, as defined in section one of this chapter, the district  
18 attorney or the attorney general at the request of the district  
19 attorney may file in the superior court where the prisoner or youth  
20 is committed or in the superior court of the county where the  
21 sexual offense occurred, a petition alleging that the prisoner or  
22 youth is a sexually dangerous person.

23 (c) Upon the filing of a petition under this section, the court in  
24 which the petition was filed shall determine whether probable  
25 cause exists to believe that the person named in the petition is a  
26 sexually dangerous person. Such person shall be provided with  
27 notice of, and an opportunity to appear in person at, a hearing to  
28 contest probable cause.

29 (d) At the probable cause hearing, the person named in the  
30 petition shall have the following rights: (1) To be represented by  
31 counsel; (2) to present evidence on such person's behalf; (3) to  
32 cross-examine witnesses who testify against such person; and  
33 (4) to view and copy all petitions and reports in the court file.

34 Section 4. (a) If the court is satisfied that probable cause exists  
35 to believe that the person named in the petition is a sexually dan-  
36 gerous person, the prisoner or youth shall be committed to the

37 treatment center for a period not exceeding sixty days for the pur-  
38 pose of examination and diagnosis under the supervision of two  
39 qualified examiners who shall, within said period, file with the  
40 court a written report of the examination and diagnosis and their  
41 recommendation of the disposition of the person named in the  
42 petition.

43 (b) The court shall supply to the qualified examiners copies of  
44 the juvenile and adult court records. The probation department  
45 shall supply them with the juvenile and adult probation record,  
46 which shall contain, if available, a history of previous juvenile and  
47 adult offenses, previous psychiatric and psychological examina-  
48 tion and such other information as may be pertinent or helpful to  
49 the examiners in making the diagnosis and recommendation. The  
50 district attorney or the attorney general shall provide a narrative or  
51 police reports of each sexual offense with which the person has  
52 been convicted or adjudicated, as well as any psychiatric, psycho-  
53 logical, medical or social worker records in his or her possession.

54 (c) The person named in the petition is entitled to counsel and  
55 if indigent, the court shall appoint an attorney. All written docu-  
56 mentation submitted to the two qualified examiners shall also be  
57 provided to counsel for the person named in the petition and to  
58 the district attorney and attorney general.

59 (d) Any person subject to an examination pursuant to the provi-  
60 sions of this section may retain a psychologist or psychiatrist who  
61 meets the requirements of a "qualified examiner" to perform an  
62 examination on his or her behalf. If the person named in the petition  
63 is indigent, the court shall provide for said "qualified examiner".

64 Section 5. (a) If the report filed with the court by the two quali-  
65 fied examiners indicates that the person is a sexually dangerous  
66 person, the court shall notify the person and his or her attorney,  
67 the district attorney and the attorney general that a hearing will be  
68 held within sixty days to determine whether the person is a sexu-  
69 ally dangerous person.

70 (b) The judge shall immediately appoint a tribunal, comprised  
71 of himself or herself, an attorney, and a psychiatrist or psycholo-  
72 gist who meets the requirements of a "qualified examiner" to hear  
73 the petition.

74 (c) The person named in the petition shall be entitled to have  
75 process issued from the court to compel the attendance of wit-

76 nesses on his or her behalf. If the person intends to rely upon the  
77 testimony or report of his qualified examiner, the report must be  
78 filed with the court and a copy provided to the district attorney  
79 and attorney general no later than ten days prior to the scheduled  
80 hearing for commitment.

81 (d) Juvenile and adult court probation records, psychiatric and  
82 psychological records and reports, including the report of any  
83 “qualified examiner” filed under this chapter, police reports  
84 relating to the person’s prior sexual offenses, incident reports  
85 arising out of the person’s incarceration or custody, and any other  
86 evidence tending to show that the person is or is not a sexually  
87 dangerous person, provided such written information has been  
88 provided to opposing counsel, shall be admissible at the commit-  
89 ment hearing

90 (e) If after the hearing, the tribunal finds beyond a reasonable  
91 doubt that the person named in the petition is a sexually dangerous  
92 person, he or she shall be committed to the treatment center for an  
93 indeterminate period of a minimum of one day and a maximum of  
94 such person’s natural life, where he or she shall be held until dis-  
95 charged pursuant to the provisions of section 9 of this chapter. The  
96 order of commitment which shall be forwarded to the treatment  
97 center and to the appropriate institution, shall become effective on  
98 the date of parole or discharge from jail, the house of corrections,  
99 prison or a facility of the department of youth services.

100 (f) If the person named in the petition is scheduled to be  
101 released from the jail, house of corrections, prison or a facility of  
102 the department of youth services at any time prior to the decision  
103 of the tribunal, the judge may temporarily commit the person to  
104 the treatment center pending disposition of the petition.

1 SECTION 3. Section 9 of said Chapter 123A of the General  
2 Laws is hereby amended by striking out the ninth sentence and  
3 inserting in place thereof the following:— “The hearing shall be  
4 conducted by a tribunal as described in paragraph (b) of section 5  
5 of this chapter.”