

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

**ADMINISTRATIVE ORDER NO. 2000-19**

**RE: 1) SEXUALLY VIOLENT PREDATOR DETERMINATIONS, AND**  
**2) APPLICATIONS FOR REVIEW OF LEVEL OF COMMUNITY**  
**NOTIFICATION**

Pursuant to the **Sexual Offender Registration and Community Notification Act**, R.I.G.L. 11-37.1-1 et seq., as amended, the following procedures shall apply to 1) sexually violent predator determinations, and 2) applications for review filed by defendants concerning their level of community notification:

**1) SEXUALLY VIOLENT PREDATOR DETERMINATIONS**

The Department of Attorney General, on behalf of the state, shall file a petition with the Superior Court Clerk's Office seeking a determination of respondent's sexually violent predator status in accordance with R.I.G.L. 11-37.1-6(B). The Attorney General's department will request a hearing date and provide notice of the date and time of the hearing to the respondent at his/her last known address and to the respondent's attorney of record. The petition shall be heard by the justice in charge of the daily criminal calendar for the county in which the petition has been filed.

If the petition is granted, the Court shall refer the matter to the Board of Review of Sexually Violent Predatory Behavior (Board of Review), if not already so referred. The Board of Review shall forward a report to the Court indicating the evidence or documentation considered by the Board, along with the Board's findings. Upon receipt of the report, the Court shall hold a hearing to determine the respondent's sexually violent predator status within the meaning of R.I.G.L. 11-37.1-2. The Board of Review's report shall be made available to the Department of Attorney General and to counsel for the respondent.

In the event that the motion of the Attorney General is accompanied by a report of the Board of Review concerning respondent's sexually violent predator status, the court shall hold a hearing to determine whether or not the respondent is a sexually violent predator as aforesaid.

Throughout all sexually violent predator status proceedings, the respondent has the right to be represented by counsel of his or her own choosing, or by an attorney appointed by the court, if he or she cannot afford counsel. The respondent also has the right to call witnesses, including experts, to testify on his or her behalf, and to cross-examine opposing witnesses. The state as the movant bears the burden of persuasion. The respondent may rebut the evidence produced by the state.

After the conclusion of the hearing, the Court shall render a decision indicating whether or not the respondent has been found to be a sexually violent predator. The Court shall provide notice of its determination to the Attorney General's department, the respondent, and his or her attorney, as well as to the Board of Review and the Parole Board.

## **2) APPLICATIONS FOR REVIEW OF LEVEL OF COMMUNITY NOTIFICATION**

In accordance with R.I.G.L. §§ 11-37.1-13 to 11-37.1-16, an individual seeking review of the Parole Board's intent to promulgate a community notice that his/her risk of re-offense is either moderate or high (Level 2 or Level 3 of community notification), shall be required to file an application for review not less than ten (10) business days from the date of the Parole Board's letter. Pursuant to R.I.G.L. 11-37.1-13, the application for review shall be filed with the criminal calendar judge in the county in which the applicant resides or intends to reside upon release from custody. The filing of an application for review operates as a stay of community notification by the Parole Board, pending the court's decision.

Upon receipt of the application for review, the Superior Court Clerk's Office shall set a date for hearing and provide notice of the hearing date to the applicant, the applicant's attorney of record, and to the Attorney General's department.

At the initial hearing, the Court shall inquire, if an applicant is not represented by counsel, if he/she desires that one be appointed. If counsel is requested, the Court shall require the applicant to file an affidavit of indigency in support of such request. If the Court is

satisfied that the applicant is unable to afford an attorney, the Court shall appoint counsel to represent the applicant.

The Court shall also direct that the Attorney General's department promptly provide copies of all papers, documents, and other materials which formed the basis for the Parole Board's determination of the level and manner of community notification, to the Court, the applicant, and his/her counsel.

On the date set for the hearing, the Court shall review such materials *in camera* and determine whether and to what extent production of witnesses and cross examination shall be required or permitted given the complexities of the matter and the extent of doubt concerning the correctness of the level, nature, and extent of the notification proposed. The court shall also presume the need for a prompt determination. As set forth in R.I.G.L. 11-37.1-15, the rules of evidence shall not apply to such proceedings and the court may rely on documentary presentations, including expert opinion, on all issues.

The Court shall then conduct a hearing on the application for review. The state shall have the burden of going forward with a *prima facie* case which justifies the proposed level and manner of notification. The applicant may rebut the evidence produced by the state. The applicant shall have the right to call witnesses, including experts, to testify on his or her behalf, and to cross examine opposing witnesses.

Upon presentation of a *prima facie* case as defined in R.I.G.L. 11-37.1-16(A) and (B), the court shall affirm the Parole Board's determination of the level and nature of the community notification unless it is persuaded by a preponderance of the evidence that the level or manner of notification is not in compliance with R.I.G.L. Chapter 37.1, Title 11, or the guidelines adopted thereunder.

BY ORDER OF:

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JOSEPH F. RODGERS, JR.  
PRESIDING JUSTICE

DATED: October 23, 2000