

Community Protection Bill

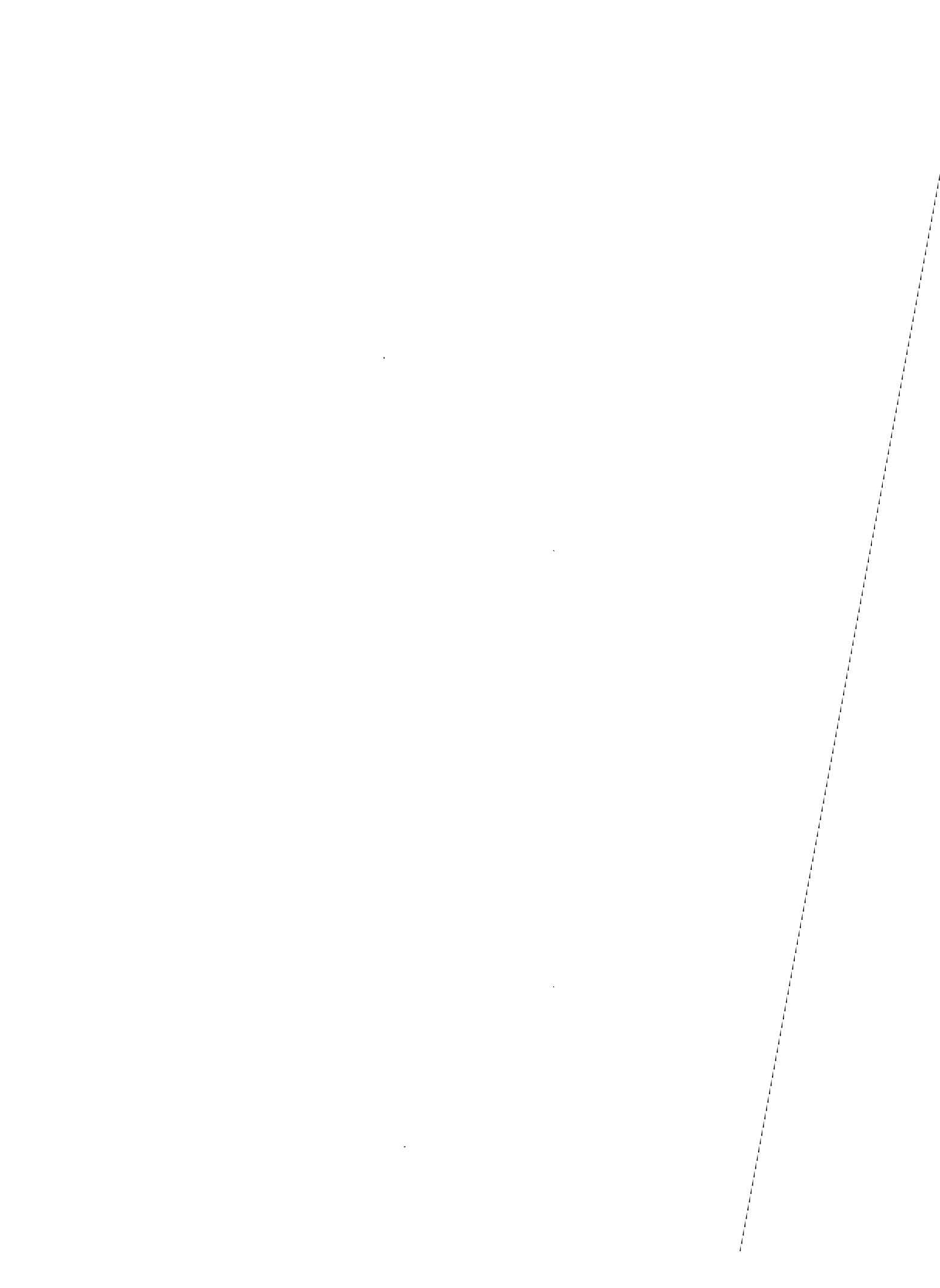
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By Authority Jean Gordon Government Printer Melbourne



LEGISLATIVE ASSEMBLY

Read 1° 3 April 1990

(Brought in by Mr Kennan and Mr Rowe)

A BILL

to provide for certain proceedings in the Supreme Court.

Community Protection Act 1990

The Parliament of Victoria enacts as follows:

Purpose

1. The purposes of this Act are—

- 5 (a) to provide for the safety of members of the public and the care or treatment and the management of Garry David, a person who has been convicted of attempted murder and other offences and is, or has been, in a psychiatric in-patient service; and
- 10 (b) to provide for proceedings to be instituted in the Supreme Court for an Order for the detention of Garry David.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Garry David

- 15 3. In this Act, Garry Ian David, also known as Garry Ian Webb, who was born on 20 November 1954 in Melbourne, is called “Garry David”.

Application for Order for preventive detention

4. (1) The Minister may apply to the Supreme Court for an Order under this Act that Garry David be placed in preventive detention.

(2) An application under sub-section (1) may be made *ex parte*.

Detention pending determination of application

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5. (1) Where an application is made under section 4—

(a) if, immediately before the application is made, Garry David is a prisoner within the meaning of the *Corrections Act* 1986, he continues, by reason of this Act, to be such a prisoner; or

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(b) if, immediately before the application is made, Garry David is a security patient within the meaning of the *Mental Health Act* 1986, he continues, by reason of this Act, to be such a patient; or

(c) if, immediately before the application is made, Garry David is neither such a prisoner nor such a security patient, he is deemed by reason of this Act, to be such a prisoner—

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until the determination of the application and must be detained in a prison or psychiatric in-patient service.

(2) Despite any provision to the contrary in any other Act, Garry David must not be discharged or released from, or be absent from, detention in which he is held by reason of sub-section (1) except in accordance with an Order of the Supreme Court or, in the case of absence on account of medical necessity, in accordance with an instrument of authority signed by the Director-General of Corrections or the authorized psychiatrist.

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(3) An instrument of authority under sub-section (2) must specify the matters referred to in section 13 (2) (a), (b) and (c).

(4) During an absence from detention under sub-section (2), Garry David continues in the custody of the Director-General of Corrections or the authorized psychiatrist, as the case requires.

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Interim Order

6. If, in the opinion of the Supreme Court, it is necessary to do so, the Court may make an interim Order that Garry David be placed in preventive detention in accordance with section 8 pending determination of an application under section 4.

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Provisions applying to determining an application

7. (1) In determining an application under this Act, the Supreme Court—

(a) is not bound by rules or practice as to evidence; and

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- (b) may arrange for examination of Garry David by a legally qualified medical practitioner, psychiatrist or psychologist; and
- 5 (c) may require the medical practitioner, psychiatrist or psychologist, or any other person whom the Court believes might be able to do so, to furnish a report as to the matters set out in section 15; and
- 10 (d) despite anything to the contrary in any other Act, may receive or require the production of (or of copies of)—
- (i) medical records and reports;
 - (ii) records and reports of any psychiatric in-patient service or prison;
 - (iii) reports made to, or by, the Adult Parole Board;
 - 15 (iv) any reports, records and other documents prepared or kept by any member of the police force;
 - (v) the transcript of any proceeding before, and any evidence tendered to, the Mental Health Review Board at a hearing—
- relating to Garry David; and
- 20 (e) may receive and take into account any report under this section or section 14.

(2) Evidence for the purposes of determining an application under this Act includes documents tendered under sub-section (1) and evidence given to the Court in any other manner the Court thinks fit.

25 Order for preventive detention

8. (1) If, on an application under this Act, the Supreme Court is satisfied, on the balance of probabilities, that Garry David—

- (a) is a serious risk to the safety of any member of the public; and
- 30 (b) is likely to commit any act of personal violence to another person—

the Supreme Court may order that Garry David be placed in preventive detention.

(2) An Order under sub-section (1)—

- 35 (a) must specify—
 - (i) a psychiatric in-patient service within the meaning of the *Mental Health Act 1986*; or
 - (ii) a prison within the meaning of the *Corrections Act 1986*; or
 - 40 (iii) another institution of detention—
- in which Garry David is to be detained; and
- (b) must specify the period, not exceeding 6 months, for which Garry David must be detained.

Variation, extension or revocation of Order

9. The Supreme Court, on the application of the Minister—
- (a) may extend, or further extend, an Order under section 8 for such period, not exceeding 6 months, as the Court thinks fit; and
 - (b) may otherwise vary or may revoke such an Order.

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Effect of Order

10. (1) Upon the making of an Order under section 8, Garry David must be detained in the psychiatric in-patient service, prison or other institution specified in the Order, or in an Order extending or varying that Order, for the period so specified.

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(2) If Garry David is detained in a psychiatric in-patient service under an Order under this Act, he is deemed to be a security patient within the meaning of the *Mental Health Act 1986* and to be in the custody of the authorized psychiatrist but sections 29, 30, 44, 45, 46, 49, 50, 51 and 52 of that Act do not apply to him.

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(3) If Garry David is detained in a prison under an Order under this Act, he is deemed to be in the custody of the Director-General of Corrections and to be a prisoner within the meaning of the *Corrections Act 1986*.

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(4) If Garry David is detained in another institution of detention under an Order under this Act, he is deemed to be in the custody of the person specified in the Order and to be subject to the provisions of the Act by or under which the institution is established to the extent so specified.

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Standards and conditions of care or treatment

11. Insofar as is consistent with the other provisions of this Act, if Garry David is detained in accordance with this Act, he must be provided with standards and conditions of care or treatment that are no less than those provided to other detainees in the psychiatric in-patient service, prison or other institution of detention in which he is detained.

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Discharge or release

12. Despite any provision to the contrary in any other Act, if an Order under section 8 or 9 is in force, Garry David must not be discharged or released from preventive detention except in accordance with an Order of the Supreme Court.

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Temporary absence from preventive detention

13. (1) Despite any provision to the contrary in any other Act, Garry David must not be absent from preventive detention while an Order under section 8 or 9 is in force unless—

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- (a) he is discharged or released in accordance with section 12; or
(b) on account of medical necessity, he is authorized by Order of the Supreme Court or by instrument signed by the person in whose custody he is detained to be temporarily absent and is absent in accordance with that Order or authority.

(2) An authority under sub-section (1) must specify—

- (a) the period during which, and conditions on which, Garry David is authorized to be absent on account of medical necessity;
(b) the place to which Garry David is to be transferred under the authority;
(c) the person, or persons, authorized to escort or supervise Garry David during the absence.

(3) During any absence from preventive detention under this section, Garry David continues in the custody of the authorized psychiatrist, Director-General of Corrections or person specified in the Order, as the case requires.

Reports to be furnished

14. The person in whose custody Garry David is detained under an Order under this Act—

- (a) may furnish a report on Garry David to the Minister at any time; and
(b) must furnish a report on Garry David to the Minister—
(i) at least once every 6 months; and
(ii) at any other time if the Minister so requests.

Report to contain certain particulars

15. A report under section 14 (b) (i) must contain particulars of—

- (a) the state of mental health of Garry David; and
(b) the state of physical health of Garry David; and
(c) any care or treatment undergone by Garry David whilst in detention; and
(d) any care or treatment proposed for Garry David; and
(e) the general behaviour of Garry David whilst in detention; and
(f) the opinion of the person making the report as to the likelihood of Garry David, if discharged, being a danger to any member of the public; and

- (g) the opinion of the person making the report as to whether the continued detention of Garry David is necessary for the safety of any member of the public; and
- (h) the opinion of the person making the report as to whether Garry David should be transferred to another psychiatric in-patient service, prison or institution of detention. 5

Expiry of Act

16. This Act expires on the first anniversary of the day on which it receives the Royal Assent.