

SECOND REGULAR SESSION

# SENATE BILL NO. 756

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3342S.011

## AN ACT

To repeal sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 633.185, and 633.190, RSMo, and to enact in lieu thereof eight new sections relating to the term "mental retardation" as used by the division of mental retardation and developmental disabilities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 2 633.185, and 633.190, RSMo, are repealed and eight new sections enacted in lieu 3 thereof, to be known as sections 630.003, 630.635, 633.005, 633.010, 633.029, 4 633.180, 633.185, and 633.190, to read as follows:

630.003. 1. There is hereby created a department of mental health to be 2 headed by a mental health commission who shall appoint a director, by and with 3 the advice and consent of the senate. The director shall be the administrative 4 head of the department and shall serve at the pleasure of the commission and be 5 compensated as provided by law for the director, division of mental health. All 6 employees of the department shall be selected in accordance with chapter 36, 7 RSMo.

8 2. (1) The "State Mental Health Commission", composed of seven 9 members, is the successor to the former state mental health commission and it 10 has all the powers, duties and responsibilities of the former commission. All 11 members of the commission shall be appointed by the governor, by and with the 12 advice and consent of the senate. None of the members shall otherwise be 13 employed by the state of Missouri.

14 (2) Three of the commission members first appointed shall be appointed 15 for terms of four years, and two shall be appointed for terms of three years, and

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 two shall be appointed for a term of two years. The governor shall designate, at  
17 the time the appointments are made, the length of the term of each member so  
18 appointed. Thereafter all terms shall be for four years.

19 (3) At least two of the members of the commission shall be physicians, one  
20 of whom shall be recognized as an expert in the field of the treatment of nervous  
21 and mental diseases, and one of whom shall be recognized as an expert in the  
22 field of [mental retardation or of other] developmental disabilities. At least two  
23 of the members of the commission shall be representative of persons or groups  
24 who are consumers having substantial interest in the services provided by the  
25 division, one of whom shall represent the mentally retarded or developmentally  
26 disabled and one of whom shall represent those persons being treated for nervous  
27 and mental diseases. Of the other three members at least one must be recognized  
28 for his **or her** expertise in general business management procedures, and two  
29 shall be recognized for their interest and expertise in dealing with alcohol/drug  
30 abuse problems, or community mental health services.

31 3. The provisions of sections 191.120, 191.125, 191.130, 191.140, 191.150,  
32 191.160, 191.170, 191.180, 191.190, 191.200, 191.210, RSMo, and others as they  
33 relate to the division of mental health not previously reassigned by executive  
34 reorganization plan number 2 of 1973 as submitted by the governor under chapter  
35 26, RSMo, are transferred by specific type transfer from the department of public  
36 health and welfare to the department of mental health. The division of mental  
37 health, department of health and welfare, chapter 202, RSMo, and others are  
38 abolished and all powers, duties and functions now assigned by law to the  
39 division, the director of the divisions of mental health or any of the institutions  
40 or officials of the division are transferred by type I transfer to the department of  
41 mental health.

42 4. The Missouri institute of psychiatry, which is under the board of  
43 curators of the University of Missouri is hereafter to be known as the "Missouri  
44 Institute of Mental Health". The purpose of the institute will be that of  
45 conducting research into improving services for persons served by the department  
46 of mental health for fostering the training of psychiatric residents in public  
47 psychiatry and for fostering excellence in mental health services through  
48 employee training and the study of mental health policy and ethics. To assist in  
49 this training, hospitals operated by and providers contracting with the  
50 department of mental health may be used for the same purposes and under the  
51 same arrangements as the board of curators of the University of Missouri utilizes

52 with other hospitals in the state in supervising residency training for medical  
53 doctors. Appropriations requests for the Missouri institute of mental health shall  
54 be jointly developed by the University of Missouri and the department of mental  
55 health. All appropriations for the Missouri institute of mental health shall be  
56 made to the curators of the University of Missouri but shall be submitted  
57 separately from the appropriations of the curators of the University of Missouri.

58         5. There is hereby established within the department of mental health a  
59 division of [mental retardation and] developmental disabilities. The director of  
60 the division shall be appointed by the director of the department. The division  
61 shall administer all state facilities under the direction and authority of the  
62 department director. The Marshall Habilitation Center, the Higginsville  
63 Habilitation Center, the Bellefontaine Habilitation Center, the Nevada  
64 Habilitation Center, the St. Louis Developmental Disabilities Treatment Centers,  
65 and the regional centers located at Albany, Columbia, Hannibal, Joplin, Kansas  
66 City, Kirksville, Poplar Bluff, Rolla, St. Louis, Sikeston and Springfield and other  
67 similar facilities as may be established, are transferred by type I transfer to the  
68 division of [mental retardation and] developmental disabilities. **Any alteration**  
69 **of the title of the division established in this subsection shall not be**  
70 **construed to change the criteria by which the division makes eligibility**  
71 **determinations for its programs and services.**

72         6. All the duties, powers and functions of the advisory council on [mental  
73 retardation and] community health centers, sections 202.664 to 202.666, RSMo,  
74 are hereby transferred by type I transfer to the division of [mental retardation  
75 and] developmental disabilities of the department of mental health. The advisory  
76 council on [mental retardation and] community health centers shall be appointed  
77 by the division director.

78         7. The advisory council on [mental retardation and] developmental  
79 disabilities heretofore established by executive order and all of the duties, powers  
80 and functions of the advisory council including the responsibilities of the  
81 provision of the council in regard to the Federal Development Disabilities Law  
82 (P.L. 91-517) and all amendments thereto are transferred by type I transfer to the  
83 division of [mental retardation and] developmental disabilities. The advisory  
84 council on [mental retardation and] developmental disabilities shall be appointed  
85 by the director of the division of [mental retardation and] developmental  
86 disabilities.

87         8. The advisory council on alcoholism and drug abuse, chapter 202, RSMo,

88 is transferred by type II transfer to the department of mental health and the  
89 members of the advisory council shall be appointed by the mental health director.

630.635. 1. If a resident in a [mental retardation facility] **habilitation**  
2 **center**, or [his] **the resident's** parent if he **or she** is a minor, or his **or her**  
3 legal guardian refuses to consent to the proposed placement, the head of the  
4 [mental retardation facility] **habilitation center** may petition, under the  
5 procedures in section 633.135, RSMo, the director of the division of [mental  
6 retardation and] developmental disabilities to determine whether the proposed  
7 placement is appropriate under chapter 633, RSMo.

8 2. If a patient in a mental health facility, or [his] **the patient's** parent  
9 if he **or she** is a minor, or his **or her** legal guardian refuses to consent to the  
10 proposed placement, the head of the mental health facility may petition the  
11 director of the division of comprehensive psychiatric services to determine  
12 whether the proposed placement is appropriate under sections 630.610, 630.615  
13 and 630.620.

14 3. The director of the division of comprehensive psychiatric services shall  
15 refer the petition to the chairman of the state advisory council for his division  
16 who shall appoint and convene a review panel composed of three members. At  
17 least one member of the panel shall be a family member or guardian of a patient  
18 who resides in a mental health facility operated by the department. The  
19 remaining members of the panel shall be persons who are from nongovernmental  
20 organizations or groups concerned with the prevention of mental disorders,  
21 evaluation, care, treatment or rehabilitation of persons affected by the same  
22 conditions as the patient the department seeks to place and who are familiar with  
23 services and service needs of persons in mental health facilities operated by the  
24 department. No member of the panel shall be an officer or employee of the  
25 department.

26 4. After prompt notice and hearing, the panel shall determine whether the  
27 proposed placement is appropriate under sections 630.610, 630.615 and  
28 630.620. The hearing shall be electronically recorded for purposes of obtaining  
29 a transcript. The council shall forward the tape recording, recommended findings  
30 of fact, conclusions of law, and decision to the director who shall enter findings  
31 of fact, conclusions of law, and the final decision. Notice of the director's decision  
32 shall be sent to the patient, or [his] **the patient's** parent if he is a minor, or his  
33 **or her** guardian by registered mail, return receipt requested. The director shall  
34 expedite this review in all respects.

35           5. If the patient, or [his] **the patient's** parent if he **or she** is a minor,  
36 or his **or her** guardian disagrees with the decision of the director, he **or she** may  
37 appeal the decision, within thirty days after notice of the decision is sent, to the  
38 circuit court of the county where the patient or resident, or [his] **the patient's**  
39 **or resident's** parent if he **or she** is a minor, or his **or her** guardian  
40 resides. The court shall review the record, proceedings and decision of the  
41 director not only under the provisions of chapter 536, RSMo, but also as to  
42 whether or not the head of the facility or the department sustained its burden of  
43 proof that the proposed placement is appropriate under sections [630.110, 630.115  
44 and 630.120] **630.610, 630.615, and 630.620**. The court shall expedite this  
45 review in all respects. Notwithstanding the provisions of section 536.140, RSMo,  
46 a court may, for good cause shown, hear and consider additional competent and  
47 material evidence.

48           6. The notice and procedure for the hearing by the panel shall be in  
49 accordance with chapter 536, RSMo.

50           7. In all proceedings either before the panel or before the circuit court, the  
51 burden of proof shall be upon the head of the facility to demonstrate by a  
52 preponderance of evidence that the proposed placement is appropriate under the  
53 criteria set forth in sections 630.610, 630.615 and [630.120] **630.620**.

54           8. Pending the convening of the hearing panel and the final decision of the  
55 director or the court if the director's decision is appealed, the department shall  
56 not place or discharge the patient from a facility except that the department may  
57 temporarily transfer such patient in the case of a medical emergency.

58           9. There shall be no retaliation against any state employee as the result  
59 of a good faith decision to place the patient which is appealed and who testifies  
60 during a hearing or otherwise provides information or evidence in regard to a  
61 proposed placement.

633.005. As used in this chapter, unless the context clearly requires  
2 otherwise, the following terms shall mean:

3           (1) "Comprehensive evaluation", a study, including a sequence of  
4 observations and examinations, of an individual leading to conclusions and  
5 recommendations formulated jointly by an interdisciplinary team of persons with  
6 special training and experience in the diagnosis and habilitation of the mentally  
7 retarded and developmentally disabled;

8           (2) "Division", the division of [mental retardation and] developmental  
9 disabilities of the department of mental health;

10 (3) "Division director", the director of the division of [mental retardation  
11 and] developmental disabilities of the department of mental health, or his  
12 designee;

13 (4) "[Mental retardation facility] **Habilitation center**", a private or  
14 department facility, other than a regional center, which admits persons who are  
15 mentally retarded or developmentally disabled for residential habilitation and  
16 other services and which is qualified or licensed as such by the department  
17 pursuant to chapter 630, RSMo. Such terms shall include, but shall not be  
18 limited to, habilitation centers and private or public residential facilities for  
19 persons who are developmentally disabled;

20 (5) "Regional center", an entity so designated by the department to  
21 provide, directly or indirectly, for comprehensive [mental retardation and]  
22 developmental disability services under this chapter in a particular region;

23 (6) "Respite care", temporary and short-term residential care, sustenance  
24 and supervision of a mentally retarded or developmentally disabled person who  
25 otherwise resides in a family home;

26 (7) "State advisory council", the Missouri advisory council on [mental  
27 retardation and] developmental disabilities as created in section 633.020.

633.010. 1. The division of [mental retardation and] developmental  
2 disabilities[, created by the omnibus reorganization act of 1974, section 9,  
3 appendix B, RSMo,] shall be a division of the department. The division shall  
4 have the responsibility of insuring that [mental retardation and] developmental  
5 disabilities prevention, evaluation, care, habilitation and rehabilitation services  
6 are accessible, wherever possible. The division shall have and exercise  
7 supervision of division residential facilities, day programs and other specialized  
8 services operated by the department, and oversight over facilities, programs and  
9 services funded or licensed by the department.

10 2. The powers, functions and duties of the division shall include the  
11 following:

12 (1) Provision of funds for the planning and implementation of accessible  
13 programs to serve persons affected by [mental retardation or] developmental  
14 disabilities;

15 (2) Review of [mental retardation and] developmental disabilities plans  
16 submitted to receive state and federal funds allocated by the department;

17 (3) Provision of technical assistance and training to community-based  
18 programs to assist in the planning and implementation of quality services;

19 (4) Assurance of program quality in compliance with such appropriate  
20 standards as may be established by the department;

21 (5) Sponsorship and encouragement of research into the causes, effects,  
22 prevention, habilitation and rehabilitation of [mental retardation and]  
23 developmental disabilities;

24 (6) Provision of public information relating to [mental retardation and]  
25 developmental disabilities and their habilitation;

26 (7) Cooperation with nonstate governmental agencies and the private  
27 sector in establishing, conducting, integrating and coordinating [mental  
28 retardation and] developmental disabilities programs and projects;

29 (8) Cooperation with other state agencies to encourage appropriate health  
30 facilities to serve, without discrimination, persons who are mentally retarded or  
31 developmentally disabled who require medical care and to provide them with  
32 adequate and appropriate services;

33 (9) Participation in developing and implementing a statewide plan to  
34 alleviate problems relating to [mental retardation and] developmental disabilities  
35 and to overcome the barriers to their solutions;

36 (10) Encouragement of coordination of division services with other  
37 divisions of the department and other state agencies;

38 (11) Encouragement of the utilization, support, assistance and dedication  
39 of volunteers to assist persons affected by [mental retardation and]  
40 developmental disabilities to be accepted and integrated into normal community  
41 activities;

42 (12) Evaluation, or the requirement of the evaluation, including the  
43 collection of appropriate necessary information, of [mental retardation or]  
44 developmental disabilities programs to determine their cost-and-benefit  
45 effectiveness;

46 (13) Participation in developing standards for residential facilities, day  
47 programs and specialized services operated, funded or licensed by the department  
48 for persons affected by [mental retardation or] developmental disabilities.

633.029. All persons determined eligible for services provided by the  
2 division of [mental retardation and] developmental disabilities prior to January  
3 1, 1991, shall be eligible for services on the basis of their earlier determination  
4 of eligibility without regard to their eligibility status under the definition of  
5 developmental disability contained in section 630.005, RSMo.

633.180. 1. A family with an annual income of sixty thousand dollars or

2 less which has a child with a developmental disability residing in the family  
3 home shall be eligible to apply for a cash stipend from the division of [mental  
4 retardation and] developmental disabilities in an amount to be determined by the  
5 regional advisory council. Such cash stipend amount shall not exceed the  
6 maximum monthly federal Supplemental Security Income payment for an  
7 individual with a developmental disability who resides alone. Such stipend shall  
8 be paid on a monthly basis and shall be considered a benefit and not income to  
9 the family. The stipend shall be used to purchase goods and services for the  
10 benefit of the family member with a developmental disability. Such goods and  
11 services may include, but are not limited to:

- 12 (1) Respite care;
- 13 (2) Personal and attendant care;
- 14 (3) Architectural and vehicular modifications;
- 15 (4) Health- and mental health-related costs not otherwise covered;
- 16 (5) Equipment and supplies;
- 17 (6) Specialized nutrition and clothing;
- 18 (7) Homemaker services;
- 19 (8) Transportation;
- 20 (9) Integrated community activities;
- 21 (10) Training and technical assistance; and
- 22 (11) Individual, family and group counseling.

23 2. Application for such stipend shall be made to the appropriate regional  
24 center. The regional center shall determine the eligibility of the individual to  
25 receive services from the division and the division shall forward the application  
26 to the regional advisory council to determine the amount of the stipend which  
27 may be approved by the council.

28 3. The family support program shall be funded by moneys appropriated  
29 by the general assembly; however, the family support program shall not supplant  
30 other programs funded through the division of [mental retardation and]  
31 developmental disabilities.

633.185. 1. The division of [mental retardation and] developmental  
2 disabilities, subject to appropriation by the general assembly, is authorized to  
3 implement and administer, as part of the family support program, a family  
4 support loan program, which shall provide a family with an annual income of  
5 sixty thousand dollars or less which has an individual with a developmental  
6 disability residing in the home, with low-interest, short-term loans to purchase



7 goods and services for the family member with a developmental disability.

8           2. Interest rates on loans made pursuant to the provisions of this section  
9 shall be no more than one percent above the prime interest rate as determined  
10 by the federal reserve system on the date the loan is approved. Loans may be for  
11 a maximum period of sixty months and the outstanding loan amount to any  
12 family may be no more than ten thousand dollars.

13           3. Applications for loans shall be made to the appropriate regional  
14 center. The regional center shall determine the eligibility of the individual to  
15 receive services from the division and the division shall forward the application  
16 to the regional advisory council to determine the amount of the loan which may  
17 be approved by the council.

18           4. There is hereby created in the state treasury for use by the department  
19 of mental health a fund to be known as the "Family Support Loan Program  
20 Fund". Moneys deposited in the fund shall be appropriated to the director of the  
21 department of mental health to be used for loans pursuant to this section. The  
22 fund shall consist of moneys appropriated by the general assembly for starting  
23 the fund and money otherwise deposited according to law. Any unexpended  
24 balance in the fund at the end of any biennium, not to exceed twice the annual  
25 loans made pursuant to this act in the previous fiscal year, is exempt from the  
26 provisions of section 33.080, RSMo, relating to the transfer of unexpended  
27 balances to the ordinary revenue fund.

633.190. 1. The division of [mental retardation and] developmental  
2 disabilities, in cooperation with the Missouri planning council for developmental  
3 disabilities, shall adopt policies and procedures and, when necessary, shall  
4 promulgate rules and regulations regarding:

- 5           (1) Program guidelines and specifications;
- 6           (2) Additional duties of the regional advisory councils;
- 7           (3) Annual evaluation of services provided by each regional center,  
8 including an assessment of consumer satisfaction;
- 9           (4) Coordination of the family support program and the use of its funds  
10 throughout the state and within each region, with other publicly funded  
11 programs, including Medicaid;
- 12           (5) Methodology for allocating resources to families with the funds  
13 available;
- 14           (6) Resolution of grievances filed by families pertaining to actions of the  
15 family support program;

16 (7) Methodology for outreach and education.

17 2. No rule or portion of a rule promulgated under the authority of this  
18 chapter shall become effective unless it has been promulgated pursuant to the  
19 provisions of [section 536.024] **chapter 536**, RSMo.

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