

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 301
97TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, May 15, 2013, with recommendation that the Senate Committee Substitute do pass.

1140S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 632.480, 632.498 and 632.505, RSMo, and to enact in lieu thereof three new sections relating to civil commitment of sexually violent predators, with an emergency clause.

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

Section A. Sections 632.480, 632.498 and 632.505, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 632.480,
3 632.498 and 632.505, to read as follows:

632.480. 1. As used in sections 632.480 to 632.513, the following terms
2 mean:

3 (1) "Agency with jurisdiction", the department of corrections or the
4 department of mental health;

5 (2) "Mental abnormality", a congenital or acquired condition affecting the
6 emotional or volitional capacity which predisposes the person to commit sexually
7 violent offenses in a degree constituting such person a menace to the health and
8 safety of others;

9 (3) "Predatory", acts directed towards individuals, including family
10 members, for the primary purpose of victimization;

11 (4) "Sexually violent offense", the felonies of forcible rape, rape, statutory
12 rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first
13 degree, or an attempt to commit any of the preceding crimes, or child molestation
14 in the first or second degree, sexual abuse, **sexual abuse in the first degree**,
15 sexual assault, **sexual assault in the first degree**, deviate sexual assault,
16 **deviate sexual assault in the first degree**, or the act of abuse of a child [as

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

17 defined in subdivision (1) of subsection 1 of section 568.060 which involves sexual
18 contact, and as defined in subdivision (2) of subsection 1 of section 568.060]
19 **involving either sexual contact, a prohibited sexual act, sexual abuse,**
20 **or sexual exploitation of a minor, or any felony offense that contains**
21 **elements substantially similar to the offenses listed above;**

22 (5) "Sexually violent predator", any person who suffers from a mental
23 abnormality which makes the person more likely than not to engage in predatory
24 acts of sexual violence if not confined in a secure facility and who:

25 (a) Has pled guilty or been found guilty, or been found not guilty by
26 reason of mental disease or defect pursuant to section 552.030 of a sexually
27 violent offense; or

28 (b) Has been committed as a criminal sexual psychopath pursuant to
29 section 632.475 and statutes in effect before August 13, 1980.

30 **2. It is the intent of the legislature to reject and abrogate earlier**
31 **case law interpretations on the meaning of or definition of "sexually**
32 **violent offense" to include, but not be limited to, holdings in: Robertson**
33 **v. State, 392 S.W.3d 1 (Mo. App. W.D., 2012); and State ex rel. Whitaker**
34 **v. Satterfield, 386 S.W.3d 893 (Mo. App. S.D., 2012) and all cases citing,**
35 **interpreting, applying, or following those cases. It is the intent of the**
36 **legislature to apply these provisions retroactively.**

632.498. 1. Each person committed pursuant to sections 632.480 to
2 632.513 shall have a current examination of the person's mental condition made
3 once every year by the director of the department of mental health or
4 designee. The yearly report shall be provided to the court that committed the
5 person pursuant to sections 632.480 to 632.513. The court shall conduct an
6 annual review of the status of the committed person. The court shall not conduct
7 an annual review of a person's status if he or she has been conditionally released
8 pursuant to section 632.505.

9 2. Nothing contained in sections 632.480 to 632.513 shall prohibit the
10 person from otherwise petitioning the court for release. The director of the
11 department of mental health shall provide the committed person who has not
12 been conditionally released with an annual written notice of the person's right to
13 petition the court for release over the director's objection. The notice shall
14 contain a waiver of rights. The director shall forward the notice and waiver form
15 to the court with the annual report.

16 3. If the committed person petitions the court for conditional release over

17 the director's objection, the petition shall be served upon the court that committed
18 the person, the **prosecuting attorney of the jurisdiction into which the**
19 **committed person is to be released,** the director of the department of mental
20 health, the head of the facility housing the person, and the attorney general.

21 4. The committed person shall have a right to have an attorney represent
22 the person at the hearing but the person is not entitled to be present at the
23 hearing. If the court at the hearing determines by a preponderance of the
24 evidence that the person no longer suffers from a mental abnormality that makes
25 the person likely to engage in acts of sexual violence if released, then the court
26 shall set a trial on the issue.

27 5. The trial shall be governed by the following provisions:

28 (1) The committed person shall be entitled to be present and entitled to
29 the benefit of all constitutional protections that were afforded the person at the
30 initial commitment proceeding;

31 (2) The attorney general shall represent the state and shall have a right
32 to a jury trial and to have the committed person evaluated by a psychiatrist or
33 psychologist not employed by the department of mental health or the department
34 of corrections. In addition, the person may be examined by a consenting
35 psychiatrist or psychologist of the person's choice at the person's own expense;

36 (3) The burden of proof at the trial shall be upon the state to prove by
37 clear and convincing evidence that the committed person's mental abnormality
38 remains such that the person is not safe to be at large and if released is likely to
39 engage in acts of sexual violence. If such determination is made by a jury, the
40 verdict must be unanimous;

41 (4) If the court or jury finds that the person's mental abnormality remains
42 such that the person is not safe to be at large and if released is likely to engage
43 in acts of sexual violence, the person shall remain in the custody of the
44 department of mental health in a secure facility designated by the director of the
45 department of mental health. If the court or jury finds that the person's mental
46 abnormality has so changed that the person is not likely to commit acts of sexual
47 violence if released, the person shall be conditionally released as provided in
48 section 632.505.

632.505. 1. Upon determination by a court or jury that the person's
2 mental abnormality has so changed that the person is not likely to commit acts
3 of sexual violence if released, the court shall place the person on conditional
4 release pursuant to the terms of this section. The primary purpose of conditional

5 release is to provide outpatient treatment and monitoring to prevent the person's
6 condition from deteriorating to the degree that the person would need to be
7 returned to a secure facility designated by the director of the department of
8 mental health.

9 2. The department of mental health is authorized to enter into an
10 interagency agreement with the department of corrections for the supervision of
11 persons granted a conditional release by the court. In conjunction with the
12 department of corrections, the department of mental health shall develop a
13 conditional release plan which contains appropriate conditions for the person to
14 be released. The plan shall address the person's need for supervision, counseling,
15 medication, community support services, residential services, vocational services,
16 and alcohol and drug treatment. The department of mental health shall submit
17 the proposed plan for conditional release to the court.

18 3. The court shall review the plan and determine the conditions that it
19 deems necessary to meet the person's need for treatment and supervision and to
20 protect the safety of the public. The court shall order that the person shall be
21 subject to the following conditions and other conditions as deemed necessary:

22 (1) Maintain a residence approved by the department of mental health
23 and not change residence unless approved by the department of mental health;

24 (2) Maintain employment unless engaged in other structured activity
25 approved by the department of mental health;

26 (3) Obey all federal and state laws;

27 (4) Not possess a firearm or dangerous weapon;

28 (5) Not be employed or voluntarily participate in an activity that involves
29 contact with children without approval of the department of mental health;

30 (6) Not consume alcohol or use a controlled substance except as prescribed
31 by a treating physician and to submit, upon request, to any procedure designed
32 to test for alcohol or controlled substance use;

33 (7) Not associate with any person who has been convicted of a felony
34 unless approved by the department of mental health;

35 (8) Not leave the state without permission of the department of mental
36 health;

37 (9) Not have contact with specific persons, including but not limited to,
38 the victim or victim's family, as directed by the department of mental health;

39 (10) Not have any contact with any child without specific approval by the
40 department of mental health;

41 (11) Not possess material that is pornographic, sexually oriented, or
42 sexually stimulating;

43 (12) Not enter a business providing sexually stimulating or sexually
44 oriented entertainment;

45 (13) Submit to a polygraph, plethysmograph, or other electronic or
46 behavioral monitoring or assessment;

47 (14) Submit to electronic monitoring which may be based on a global
48 positioning system or other technology which identifies and records a person's
49 location at all times;

50 (15) Attend and fully participate in assessment and treatment as directed
51 by the department of mental health;

52 (16) Take all psychiatric medications as prescribed by a treating
53 physician;

54 (17) Authorize the department of mental health to access and obtain
55 copies of confidential records pertaining to evaluation, counseling, treatment, and
56 other such records and provide the consent necessary for the release of any such
57 records;

58 (18) Pay fees to the department of mental health and the department of
59 corrections to cover the costs of services and monitoring;

60 (19) Report to or appear in person as directed by the department of
61 mental health and the department of corrections, and to follow all directives of
62 such departments;

63 (20) Comply with any registration requirements under sections 589.400
64 to 589.425; and

65 (21) Comply with any other conditions that the court determines to be in
66 the best interest of the person and society.

67 4. The court shall provide a copy of the order containing the conditions of
68 release to the person, the attorney general, the department of mental health, the
69 head of the facility housing the person, and the department of corrections.

70 5. A person who is conditionally released and supervised by a probation
71 and parole officer employed by the department of corrections remains under the
72 control, care, and treatment of the department of mental health.

73 6. The court may modify conditions of release upon its own motion or upon
74 the petition of the department of mental health, the department of corrections,
75 or the person on conditional release.

76 7. The following provisions shall apply to violations of conditional release:

77 (1) If any probation and parole officer has reasonable cause to believe that
78 a person on conditional release has violated a condition of release or that the
79 person is no longer a proper subject for conditional release, the officer may issue
80 a warrant for the person's arrest. The warrant shall contain a brief recitation of
81 the facts supporting the officer's belief. The warrant shall direct any peace officer
82 to take the person into custody immediately so that the person can be returned
83 to a secure facility;

84 (2) If the director of the department of mental health or the director's
85 designee has reasonable cause to believe that a person on conditional release has
86 violated a condition of release or that the person is no longer a proper subject for
87 conditional release, the director or the director's designee may request that a
88 peace officer take the person into custody immediately, or request that a
89 probation and parole officer or the court which ordered the release issue a
90 warrant for the person's arrest so that the person can be returned to a secure
91 facility;

92 (3) At any time during the period of a conditional release, the court which
93 ordered the release may issue a notice to the released person to appear to answer
94 a charge of a violation of the terms of the release and the court may issue a
95 warrant of arrest for the violation. Such notice shall be personally served upon
96 the released person. The warrant shall authorize the return of the released
97 person to the custody of the court or to the custody of the director of mental
98 health or the director's designee;

99 (4) No peace officer responsible for apprehending and returning the person
100 to the facility upon the request of the director of the department of mental health
101 or the director's designee or a probation and parole officer shall be civilly liable
102 for apprehending or transporting such person to the facility so long as such duties
103 were performed in good faith and without negligence;

104 (5) The department of mental health shall promptly notify the court that
105 the person has been apprehended and returned to a secure facility;

106 (6) Within seven days of the person's return to a secure facility, the
107 department of mental health must either request that the attorney general file
108 a petition to revoke the person's conditional release or continue the person on
109 conditional release;

110 (7) If a petition to revoke conditional release is filed, the person shall
111 remain in custody until a hearing is held on the petition. The hearing shall be
112 given priority on the court's docket. If upon hearing the evidence, the court finds

113 by preponderance of the evidence that the person has violated a condition of
114 release and that the violation of the condition was sufficient to render the person
115 no longer suitable for conditional release, the court shall revoke the conditional
116 release and order the person returned to a secure facility designated by the
117 director of the department of mental health. If the court determines that
118 revocation is not required, the court may modify or increase the conditions of
119 release or order the person's release on the existing conditions of release;

120 (8) A person whose conditional release has been revoked may petition the
121 court for subsequent release pursuant to sections 632.498, 632.501, and 632.504
122 no sooner than six months after the person's return to a secure facility.

123 8. The department of mental health may enter into agreements with the
124 department of corrections and other departments and may enter into contracts
125 with private entities for the purpose of supervising a person on conditional
126 release.

127 9. The department of mental health and the department of corrections
128 may require a person on conditional release to pay a reasonable fee to cover the
129 costs of providing services and monitoring while the person is released. Each
130 department may adopt rules with respect to establishing, waiving, collecting, and
131 using fees. Any rule or portion of a rule, as that term is defined in section
132 536.010, that is created under the authority delegated in this section shall
133 become effective only if it complies with and is subject to all of the provisions of
134 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
135 nonseverable and if any of the powers vested with the general assembly pursuant
136 to chapter 536 to review, to delay the effective date, or to disapprove and annul
137 a rule are subsequently held unconstitutional, then the grant of rulemaking
138 authority and any rule proposed or adopted after August 28, 2006, shall be
139 invalid and void.

140 10. In the event a person on conditional release escapes from custody, the
141 department of mental health shall notify the court, the department of corrections,
142 the attorney general, the chief law enforcement officer of the county or city not
143 within a county from where the person escaped or absconded, and any other
144 persons necessary to protect the safety of the public or to assist in the
145 apprehension of the person. The attorney general shall notify victims and
146 witnesses. Upon receiving such notice, the attorney general shall file escape from
147 commitment charges under section 575.195.

148 **11. When a person who has been granted conditional release**

149 **under this section is being electronically monitored and remains in the**
150 **county, city, town, or village where the facility is located that released**
151 **the person, the department of corrections shall provide, upon request,**
152 **the chief of the local law enforcement agency of such county, city, town,**
153 **or village with access to the information gathered by the global**
154 **positioning system or other technology used to monitor the**
155 **person. This access shall include, but not be limited to, any user name**
156 **or password needed to view any real-time or recorded information**
157 **about the person, and any alert or message generated by the**
158 **technology. The access shall continue while the person is being**
159 **electronically monitored and is living in the county, city, town, or**
160 **village where the facility that released the offender is located. The**
161 **information obtained by the chief of the local law enforcement agency**
162 **shall be closed and shall not be disclosed to any person outside the law**
163 **enforcement agency except upon an order of the court supervising the**
164 **conditional release.**

Section B. Because immediate action is necessary to protect the victims
2 of sexual violent offenses the repeal and reenactment of section 632.480 of section
3 A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace, and safety, and is hereby declared to be an emergency act
5 within the meaning of the constitution, and the repeal and reenactment of section
6 632.480 of section A of this act shall be in full force and effect upon its passage
7 and approval.

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