

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILLS NOS. 515 & 783**  
**89TH GENERAL ASSEMBLY**

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Reported from the Committee on Civil and Criminal Jurisprudence, March 12, 1998, with recommendation that the Senate Committee Substitute do pass.

S2296.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

Relating to the civil commitment of sexual predators.

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

**Section 1. As used in sections 1 to 12 of this act, the following terms mean:**

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

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

**(3) "Predatory", means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization;**

**(4) "Sexually violent offense", means the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree or an attempt to commit any of the preceding crimes or child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony;**

**(5) "Sexually violent predator", means any person who has been convicted of or found not guilty by reason of mental disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense or any person committed as a criminal sexual psychopath pursuant to section 632.475, RSMo, and statutes in effect before August 13, 1980, and who suffers from a mental abnormality which makes the person likely to engage in the predatory acts of sexual violence, if not confined in a secure facility.**

**Section 2. 1. When it appears that a person may meet the criteria of a sexually**

**violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection 4 of this section. Written notice shall be given:**

**(1) One hundred eighty days prior to the anticipated release from a correctional center of the department of corrections where such person is confined and who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than one hundred eighty days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;**

**(2) At any time prior to release of a person who has been found not guilty by reason of mental disease or defect of a sexually violent offense pursuant to section 552.030, RSMo; or**

**(3) At any time prior to release of a person who was committed as a criminal sexual psychopath pursuant to section 632.475, RSMo, and statutes in effect before August 13, 1980.**

**2. The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4 of this section of the following:**

**(1) The person's name, identifying factors, anticipated future residence and offense history; and**

**(2) Documentation of institutional adjustment and any treatment received or refused, including the Missouri sexual offender program (MOSOP) and a description of the person's failure to successfully complete the program if applicable.**

**3. The director of the department of mental health and the director of the department of corrections shall jointly establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1 of this section. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.**

**4. The attorney general shall appoint a five-member prosecutor's review committee composed of a cross section of county prosecutors from urban and rural counties. No more than three members shall be from urban counties, and one member shall be the prosecuting attorney of the county in which the person was convicted or committed pursuant to chapter 552, RSMo. The committee shall review the records of each person referred to the attorney general pursuant to subsection 1 of this section. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the**

attorney general and the prosecutor's review committee.

**Section 3.** When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition in the probate division of the circuit court in which the person was convicted or committed pursuant to chapter 552, RSMo, within forty-five days of the date the attorney general received the written notice by the agency of jurisdiction, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

**Section 4.** Upon filing a petition pursuant to section 3 of this act, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such probable cause determination is made, the court shall direct that person be taken into custody and direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail. The court shall conduct a hearing within seventy-two hours, excluding Saturdays, Sundays and legal holidays. Such person shall be provided with notice of, and an opportunity to appear in person at the hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall verify the detainee's identity, and determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony. At the hearing, the person shall have the following rights in addition to the rights previously specified:

- (1) To be represented by counsel;
- (2) To present evidence on such person's behalf;
- (3) To cross-examine witnesses who testify against such person; and
- (4) To view and copy all petitions and reports in the court file.

If the probable cause determination is made, the court shall order that the person be evaluated as to whether the person is a sexually violent predator. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or psychologist as defined in section 632.005. In addition, such person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. Any examination shall be conducted in the facility in which the person is confined. Any examinations ordered shall be made at such time and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the person examined, the director shall determine the time and conditions under which the examination shall be conducted. The psychiatrist or psychologist conducting such an examination shall be

authorized to interview family and associates of the person being examined, as well as victims and witnesses of the person's offense or offenses, for use in the examination unless the court for good cause orders otherwise. The psychiatrist or psychologist shall have access to all materials provided to and considered by the multidisciplinary team and to any police reports related to sexual offenses committed by the person being examined. Any examination performed pursuant to this section shall be completed and filed with the court within forty-five days of the date the order is received by the director or other evaluator unless the court for good cause orders otherwise. One examination shall be provided at no charge by the department. All costs of any subsequent evaluations shall be assessed to the party requesting the evaluation.

Section 5. Within sixty days after the completion of the examination, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to sections 1 to 12 of this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the court shall have the right to demand that the trial be before a jury. If no demand for a jury is made, the trial shall be before the court.

Section 6. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of mental health. At all times, persons committed for control, care and treatment by the department of mental health shall be kept in a secure facility. The director of the department of mental health and the director of the department of corrections may enter into an interagency agreement for the confinement of such persons. Such persons who are in confinement shall be housed and managed separately from others in the custody of the director of the department of mental health or the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from others.

Section 7. Each person committed pursuant to this act shall have a current

**examination of the person's mental condition made once every year by the director of the department of mental health or designee. The yearly report shall be provided to the court that committed the person pursuant to this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge. If the court determines that probable cause exists to believe that the person's mental abnormality has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. In addition, the person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.**

**Section 8. If the director of the department of mental health or designee determines that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the director shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by a psychiatrist or psychologist not employed by the department of mental health or department of corrections. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.**

**Section 9. Nothing in this act shall prohibit a person from filing a petition for discharge. The director of the department of mental health shall provide the committed person with an annual written notice of the person's right to petition the court for release. However, if a person has previously filed a petition for discharge without the director of the department of mental health's approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition**

contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the director's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

**Section 10.** In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 2 of this act and when necessary in determining whether a person is or continues to be a sexually violent predator. Any psychological reports, drug and alcohol reports, treatment records, medical records or victim impact statements which have been submitted to the court or admitted into evidence pursuant to this act shall be part of the record but shall be sealed and opened only on order of the court.

**Section 11.** The director of the department of mental health may be a party to any proceeding held under the provisions of sections 1 to 12 of this act. The director may use general counsel, legal staff, or employ legal counsel to represent the department in such proceedings.

**Section 12. 1.** The attorney general shall in a timely manner inform victims or witnesses of a sexually violent offense committed by a person:

(a) That a written notice has been given by the agency with jurisdiction to the attorney general and the multidisciplinary team pursuant to subsection 1 of section 2 of this act;

(b) Of the decision of the prosecutor's review committee in determining whether or not the person may be a sexually violent predator;

(c) That a petition has been filed with the circuit court pursuant to section 3 of this act;

(d) Of the outcome of a trial held under the provisions of section 5 of this act;

(e) Of the filing of any petition or pending proceedings held pursuant to the provisions of sections 7 to 9 of this act;

**2.** Such victims or witnesses shall have the right to be present at any proceeding held under the provisions of sections 1 to 12 of this act.

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