

SECOND REGULAR SESSION

SENATE BILL NO. 783

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time January 21, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1971.02I

AN ACT

To amend chapter 632, RSMo, by adding thereto twelve new sections relating to sexual offenses.

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

Section A. Chapter 632, RSMo, is amended by adding thereto twelve new sections, to be known as sections 632.600, 632.603, 632.605, 632.607, 632.609, 632.612, 632.615, 632.617, 632.619, 632.621, 632.623 and 632.625, to read as follows:

632.600. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 632.600 to 632.625:

(1) "Agency with jurisdiction", that department with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections and the department of mental health;

(2) "Department", the department of corrections;

(3) "Mental abnormality", a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others;

(4) "Predatory", acts directed towards strangers or individuals with whom a relationship has been established involving physical abuse or victimization;

(5) "Sexually motivated act", an act or attempted act punishable by law of which a significant motivating component is sexual violence;

(6) "Sexual offense", an act that is:

(a) Defined in chapter 566 as forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, child molestation in the first degree when classified as a B felony, or sexual abuse;

(b) Any federal or out-of-state conviction for a felony offense that under the laws

of this state would be a sexual offense as defined in this subdivision;

(c) An act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, or kidnapping in the first or second degree, which act at the time of the trial for the offense pursuant to section 632.625, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in this section; or

(d) An act as described in chapter 566 that is an attempt or a conspiracy to commit one of the felonies designated in paragraphs (a), (b) or (c) of this subdivision;

(7) "Sexual predator", any person who has been convicted of or charged with a sexual offense and who suffers from a mental abnormality which makes the person likely to engage in sexual offenses in the future.

632.603. 1. When it appears to the director of the agency with jurisdiction that a person may meet the criteria of a sexual predator as defined in 632.600, the agency with jurisdiction shall refer the name of the person in writing to the attorney general and the multidisciplinary team established in subsection 4 of this section:

(1) At least one hundred and eighty days prior to the release from confinement or involuntary detention of a person who has been convicted of a sexual offense;

(2) At any time prior to:

(a) The release from confinement or involuntary detention of a person found to have committed a sexual offense as a juvenile;

(b) Release of a person who has been found not guilty by reason of insanity of a sexual offense pursuant to section 552.040, RSMo; or

(c) 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, anticipated future residence, and offense history; and

(2) Documentation of institutional adjustment and any treatment received or refused.

3. The agency of jurisdiction and its employees shall be immune from liability for any good-faith conduct under this section.

4. The director of the department of mental health and the director of the department of corrections shall 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 sexual predator. The team shall notify the attorney general of its assessment. The team shall consist of at least three members, no more than two of which shall be from

any one state agency.

5. 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 shall be from urban counties. 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 sexual predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

632.605. When it appears that the person presently confined may be a sexual predator and the prosecutor's review committee appointed as provided in subsection 5 of section 632.603 has determined by a majority vote, that the person meets the definition of a sexual predator, the attorney general may file a petition, within seventy-five days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection 1 of section 632.603, alleging that the person is a sexual predator and stating sufficient facts to support such allegation.

632.607. 1. Upon the filing of a petition under section 632.605, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexual predator, as defined in subdivision (7) of section 632.600. If such determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexual predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of mental health. In adopting such rules, the department of mental health shall consult with the department of health and the department of corrections.

2. Whenever any person is subject to an examination under sections 632.600 to 632.625, he may retain experts or professional persons to perform an examination on his behalf. When the person wishes to be examined by a qualified expert or professional person of his own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on that person's behalf.

632.609. Within forty-five days after the filing of a petition pursuant to section 632.605, the court shall conduct a trial to determine whether the person is a sexual predator. At all stages of the proceedings under sections 632.600 to 632.625, any person subject to these sections shall be entitled to the assistance of counsel, and if the person

is indigent, the court shall appoint counsel to assist him. The person or the attorney general shall all have the right to demand that the trial be before a jury. If no demand is made, the trial shall be before the court.

632.612. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexual predator. If the court or jury determines that the person is a sexual predator, the person shall be committed to the custody of the department of mental health in a secure facility for control, care and treatment until such time as the person's mental abnormality has changed so that he is no longer likely to commit a sexual offense as defined in subdivision (6) of section 632.600. 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 pursuant to sections 632.600 to 632.625 shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health may enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexual predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted.

632.615. Each person committed to the department of mental health pursuant to section 632.612 shall have an examination of his mental condition made at least once every year. The person may retain, or if he is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him, and such expert or professional person shall have access to all records concerning the person. A periodic report shall be provided to the court that committed the person under sections 632.600 to 632.625.

632.617. The involuntary detention or commitment of persons under sections 621.600 to 632.625 shall conform to constitutional requirements for care and treatment.

632.619. 1. If the director of the department of mental health determines that the person's mental abnormality has so changed that the person is not likely to engage in predatory sexual offenses 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 within forty-

five days order a hearing. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his choice. The hearing shall be before the judge of the court which originally determined the person to be a sexual predator and the person shall not have the right to a jury trial at this stage of the proceedings. The burden of proof shall be upon the state to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is likely to commit a sexual offense as defined in subdivision (6) of section 632.600 if discharged.

2. Nothing contained in sections 632.600 to 632.625 shall prohibit the person from otherwise petitioning the court for discharge without the director's approval. The director shall provide the committed person with an annual written notice of the person's right to petition the court for release over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he is no longer likely to commit a sexual offense as defined in subdivision (6) of section 632.600 if discharged. The committed person shall have a right to have an attorney represent him at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person's mental abnormality has so changed that the person is no longer likely to commit a sexual offense if discharged, then the court shall set a hearing on the issue. The attorney general shall represent the state and shall be entitled to have the person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate him on his behalf and the court shall appoint an expert if the person is indigent and requests an appointment. 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 likely to commit a sexual offense as defined in subdivision (6) of section 632.600.

632.621. Nothing in sections 632.600 to 632.625 shall prohibit a person from filing a petition for discharge pursuant to these sections. However, if a person has previously filed a petition for discharge without the approval of the director of the department of mental health and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the petitioner's condition had not so changed that he was no longer likely to commit a sexual offense as defined in subdivision (6) of section 632.600 if discharged, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find

that the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person 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.

632.623. In addition to any other information required to be released pursuant to sections 632.600 to 632.625, prior to the release of a person committed pursuant to sections 632.600 to 632.625, the director of the department of mental health shall give written notice of such release to any victim of the person's activities or crime who is alive and whose address is known to the director or, if the victim is deceased, to the victim's family, if the family's address is known to the secretary. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

632.625. 1. The prosecuting attorney shall file a special allegation of sexual motivation within ten days after arraignment in every criminal case other than sexual offenses as defined in chapter 566, RSMo, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

2. In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in chapter 566, RSMo.

3. The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

✓