

SECOND REGULAR SESSION

SENATE BILL NO. 952

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KENNEY.

Read 1st time February 25, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S4003.011

AN ACT

To repeal section 589.040, RSMo 1994, relating to sexual offenses, and to enact in lieu thereof eleven new sections relating to the same subject.

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

Section A. Section 589.040, RSMo 1994, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 589.040, 632.600, 632.603, 632.605, 632.607, 632.609, 632.612, 632.615, 632.617, 632.619 and 632.621, to read as follows:

589.040. 1. The director of the department of corrections shall develop a program of treatment, education and rehabilitation for all imprisoned offenders who are serving sentences for sexual assault offenses. **This treatment program, hereafter known as the Missouri sexual offender program (MOSOP), shall serve at least twenty-five percent of the population of eligible imprisoned sexual offenders at any one time. The director may assign an eligible offender to MOSOP if that offender has three years or less remaining on his sentence before he is eligible for probation.** [When developing such programs,] The ultimate goal of **MOSOP** shall be the prevention of future sexual assaults by the participants in [such programs] **this program**, and the director shall utilize those concepts, services, programs, projects, facilities and other resources designed to achieve this goal.

2. All persons imprisoned by the department of corrections for sexual assault offenses **who are eligible for treatment under subsection 1 of this section** shall be required to successfully complete the [programs] **MOSOP program** developed pursuant to subsection 1 of this section. **If a person refuses to participate in the treatment program, he shall not be eligible for early probation pursuant to section 559.012, RSMo, or early parole.**

632.600. Unless the context clearly requires otherwise, the definitions in this

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

section apply throughout sections 632.600 to 632.621:

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

(2) "Director", the director of 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) "Sexually violent offense", an act that is:

(a) Defined in chapter 566 as forcible rape, statutory rape, statutory rape in the first degree, forcible sodomy, statutory sodomy in the first degree, child molestation in the first or second degree or deviant sexual assault;

(b) Any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent 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, kidnapping in the first or second degree or burglary in the first degree, which act either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to sections 632.300 to 632.475, 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) "Sexually violent predator", any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in sexually violent offenses in the future.

632.603. 1. When it appears to the director of the department with jurisdiction that a person may meet the criteria of a sexually violent predator as defined in 632.600, or that a person refuses to participate in a treatment program for sexual offenders pursuant to section 589.040, RSMo, the department with jurisdiction shall refer the name of the person in writing to the prosecuting attorney of the county where the person was charged, at least ninety days prior to:

(1) The release from confinement or involuntary detention of a person who has been convicted of a sexually violent offense;

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

(3) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to section 552.020, RSMo; or

(4) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to section 552.040, RSMo.

2. The department shall inform the prosecutor 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 department and its employees shall be immune from liability for any good-faith conduct under this section.

4. As used in this section and section 552.104, RSMo, "department with jurisdiction" means 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.

632.605. 1. The prosecuting attorney of the county where the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition in the circuit court in which the person was adjudicated alleging that the person is a sexually violent predator or has refused to participate in a MOSOP program pursuant to section 589.040, RSMo, and stating sufficient facts to support such allegation.

2. The prosecuting attorney or attorney general shall file a petition filed pursuant to subsection 1 of this section within seventy-five days of receiving written notice from the department of jurisdiction.

632.607. 1. Within forty-five days after 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 sexually violent 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 sexually violent 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 632.621, 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 sexually violent predator. At all stages of the proceedings under sections 632.600 to 632.621, 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, the prosecuting attorney or the attorney general if requested by the prosecuting attorney, 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. 1. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in section 632.600, the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in section 632.600. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of corrections in a secure facility for control, care and treatment until such time as the person's mental abnormality or personality disorder has changed so that he is no longer likely to commit a sexually violent 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 corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

2. If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to section 552.020, RSMo, and his commitment is sought pursuant to subsection 1 of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under section 552.020, RSMo, that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person committed the act or acts charged, the extent

to which the person's incompetence affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person on that issue and may proceed to consider whether the person should be committed pursuant to this section.

632.615. Each person committed to the department of corrections pursuant to section 632.612 shall have an examination of his mental condition made at least once every year. During this period he will participate in a MOSOP program pursuant to section 589.040, RSMo. 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 632.621.

632.617. The involuntary detention or commitment of persons under sections 621.600 to 632.621 shall conform to constitutional requirements for care and treatment.

632.619. 1. If the director of the department of corrections determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory 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 prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the prosecuting attorney, 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 sexually violent 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 or personality disorder remains such that the petitioner is likely to commit a sexually violent offense as defined in subdivision (6) of section 632.600 if discharged.

2. Nothing contained in sections 632.600 to 632.621 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 sexually violent 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 or personality disorder has so changed that the person is no longer likely to commit a sexually violent offense if discharged, then the court shall set a hearing on the issue. The prosecuting attorney or the attorney general, if requested by the prosecuting attorney, 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 or personality disorder remains such that the person is likely to commit a sexually violent offense as defined in subdivision (6) of section 632.600.

632.621. Nothing in sections 632.600 to 632.621 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 director's approval 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 sexually violent 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.

✓