

SECOND REGULAR SESSION

SENATE BILL NO. 783

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 27, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

4034S.011

AN ACT

To repeal sections 632.484, 632.489, and 632.495, RSMo, and to enact in lieu thereof three new sections relating to sexually violent predators.

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

Section A. Sections 632.484, 632.489, and 632.495, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 632.484,
3 632.489, and 632.495, to read as follows:

632.484. 1. When the attorney general receives written notice from any
2 law enforcement agency that a person, who has pled guilty to or been convicted
3 of a sexually violent offense and who is not presently in the physical custody of
4 an agency with jurisdiction:

5 (1) Has committed a recent overt act; or

6 (2) Has been in the custody of an agency with jurisdiction within the
7 preceding ten years and may meet the criteria of a sexually violent predator;
8 the attorney general may file a petition for detention and evaluation with the
9 probate division of the court in which the person was convicted, or committed
10 pursuant to chapter 552, RSMo, alleging the respondent may meet the definition
11 of a sexually violent predator and should be detained for evaluation for a period
12 of up to nine days. The written notice shall include the previous conviction
13 record of the person, a description of the recent overt act, if applicable, and any
14 other evidence which tends to show the person to be a sexually violent
15 predator. The attorney general shall provide notice of the petition to the
16 prosecuting attorney of the county where the petition was filed.

17 2. Upon a determination by the court that the person may meet the
18 definition of a sexually violent predator, the court shall order the detention and

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

19 transport of such person to a secure facility to be determined by the department
20 of mental health **under provisions of section 632.495**. The attorney general
21 shall immediately give written notice of such to the department of mental health.

22 3. Upon receiving physical custody of the person and written notice
23 pursuant to subsection 2 of this section, the department of mental health shall,
24 through either a psychiatrist or psychologist as defined in section 632.005, make
25 a determination whether or not the person meets the definition of a sexually
26 violent predator. The department of mental health shall, within seven days of
27 receiving physical custody of the person, provide the attorney general with a
28 written report of the results of its investigation and evaluation. The attorney
29 general shall provide any available records of the person that are retained by the
30 department of corrections to the department of mental health for the purposes of
31 this section. If the department of mental health is unable to make a
32 determination within seven days, the attorney general may request an additional
33 detention of ninety-six hours from the court for good cause shown.

34 4. If the department determines that the person may meet the definition
35 of a sexually violent predator, the attorney general shall provide the results of the
36 investigation and evaluation to the prosecutors' review committee. The
37 prosecutors' review committee shall, by majority vote, determine whether or not
38 the person meets the definition of a sexually violent predator within twenty-four
39 hours of written notice from the attorney general's office. If the prosecutors'
40 review committee determines that the person meets the definition of a sexually
41 violent predator, the prosecutors' review committee shall provide written notice
42 to the attorney general of its determination. The attorney general may file a
43 petition pursuant to section 632.486 within forty-eight hours after obtaining the
44 results from the department.

45 5. For the purposes of this section "recent overt act" means any act that
46 creates a reasonable apprehension of harm of a sexually violent nature.

47 6. The provisions of subdivision (2) of subsection 1 of this section shall
48 expire December 31, 2001.

632.489. 1. Upon filing a petition pursuant to section 632.484 or 632.486,
2 the judge shall determine whether probable cause exists to believe that the
3 person named in the petition is a sexually violent predator. If such probable
4 cause determination is made, the judge shall direct that person be taken into
5 custody and direct that the person be transferred to an appropriate secure
6 facility, including, but not limited to, a county jail. If the person is ordered to the

7 department of mental health, the director of the department of mental health
8 shall determine the appropriate secure facility to house the person **under the**
9 **provisions of section 632.495.**

10 2. Within seventy-two hours after a person is taken into custody pursuant
11 to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays,
12 such person shall be provided with notice of, and an opportunity to appear in
13 person at, a hearing to contest probable cause as to whether the detained person
14 is a sexually violent predator. At this hearing the court shall:

15 (1) Verify the detainee's identity; and

16 (2) Determine whether probable cause exists to believe that the person is
17 a sexually violent predator. The state may rely upon the petition and supplement
18 the petition with additional documentary evidence or live testimony.

19 3. At the probable cause hearing as provided in subsection 2 of this
20 section, the detained person shall have the following rights in addition to the
21 rights previously specified:

22 (1) To be represented by counsel;

23 (2) To present evidence on such person's behalf;

24 (3) To cross-examine witnesses who testify against such person; and

25 (4) To view and copy all petitions and reports in the court file, including
26 the assessment of the multidisciplinary team.

27 4. If the probable cause determination is made, the court shall direct that
28 the person be transferred to an appropriate secure facility, including, but not
29 limited to, a county jail, for an evaluation as to whether the person is a sexually
30 violent predator. If the person is ordered to the department of mental health, the
31 director of the department of mental health shall determine the appropriate
32 secure facility to house the person. The court shall direct the director of the
33 department of mental health to have the person examined by a psychiatrist or
34 psychologist as defined in section 632.005 who was not a member of the
35 multidisciplinary team that previously reviewed the person's records. In addition,
36 such person may be examined by a consenting psychiatrist or psychologist of the
37 person's choice at the person's own expense. Any examination shall be conducted
38 in the facility in which the person is confined. Any examinations ordered shall
39 be made at such time and under such conditions as the court deems proper;
40 except that, if the order directs the director of the department of mental health
41 to have the person examined, the director shall determine the time, place and
42 conditions under which the examination shall be conducted. The psychiatrist or

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

632.495. The court or jury shall determine whether, beyond a reasonable
2 doubt, the person is a sexually violent predator. If such determination that the
3 person is a sexually violent predator is made by a jury, such determination shall
4 be by unanimous verdict of such jury. Any determination as to whether a person
5 is a sexually violent predator may be appealed. If the court or jury determines
6 that the person is a sexually violent predator, the person shall be committed to
7 the custody of the director of the department of mental health for control, care
8 and treatment until such time as the person's mental abnormality has so changed
9 that the person is safe to be at large. Such control, care and treatment shall be
10 provided by the department of mental health. At all times, **persons ordered to**
11 **the department of mental health after a determination by the court that**
12 **such persons may meet the definition of a sexually violent predator,**
13 **persons ordered to the department of mental health after a finding of**
14 **probable cause under section 632.489, and** persons committed for control,
15 care and treatment by the department of mental health pursuant to sections
16 632.480 to 632.513 shall be kept in a secure facility designated by the director of
17 the department of mental health and such persons shall be segregated at all
18 times from any other patient under the supervision of the director of the
19 department of mental health. The department of mental health shall not place
20 or house [an offender determined to be a sexually violent predator] **a person**
21 **ordered to the department of mental health after a determination by**
22 **the court that such person may meet the definition of a sexually violent**
23 **predator, a person ordered to the department of mental health after a**
24 **finding of probable cause under section 632.489, or a person committed**

25 **for control, care, and treatment by the department of mental health,**
26 pursuant to sections 632.480 to 632.513, with other mental health patients who
27 have not been determined to be sexually violent predators. The department of
28 mental health is authorized to enter into an interagency agreement with the
29 department of corrections for the confinement of such persons. Such persons who
30 are in the confinement of the department of corrections pursuant to an
31 interagency agreement shall be housed and managed separately from offenders
32 in the custody of the department of corrections, and except for occasional
33 instances of supervised incidental contact, shall be segregated from such
34 offenders. If the court or jury is not satisfied beyond a reasonable doubt that the
35 person is a sexually violent predator, the court shall direct the person's
36 release. Upon a mistrial, the court shall direct that the person be held at an
37 appropriate secure facility, including, but not limited to, a county jail, until
38 another trial is conducted. If the person is ordered to the department of mental
39 health, the director of the department of mental health shall determine the
40 appropriate secure facility to house the person. Any subsequent trial following
41 a mistrial shall be held within ninety days of the previous trial, unless such
42 subsequent trial is continued as provided in section 632.492.

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