

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 188

97TH GENERAL ASSEMBLY

2013

0939H.04T

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## AN ACT

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

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*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Section A. Sections 632.480, 632.498 and 632.505, RSMo, are repealed and  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. 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.

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.

Bill ✓

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