

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 188**  
**97TH GENERAL ASSEMBLY**

0939H.04C

D. ADAM CRUMBLISS, Chief Clerk

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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Section A. Sections 632.480, 632.498 and 632.505, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 632.480, 632.498 and 632.505, to read as follows:

632.480. As used in sections 632.480 to 632.513, the following terms mean:

- (1) "Agency with jurisdiction", the department of corrections or the department of mental health;
- (2) "Mental abnormality", 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", acts directed towards individuals, including family members, for the primary purpose of victimization;
- (4) "Sexually violent offense", the felonies 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 or second degree, sexual abuse, **sexual abuse in the first degree**, sexual assault, **sexual assault in the first degree**, deviate sexual assault, **deviate sexual assault in the first degree**, or the act of abuse of a child [as defined in subdivision (1) of subsection 1 of section 568.060 which involves sexual contact, and as defined in subdivision (2) of subsection 1 of section 568.060] **involving either sexual**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **contact, a prohibited sexual act, sexual abuse, or sexual exploitation of a minor, or any**  
17 **felony offense that contains elements substantially similar to the offenses listed above;**

18 (5) "Sexually violent predator", any person who suffers from a mental abnormality which  
19 makes the person more likely than not to engage in predatory acts of sexual violence if not  
20 confined in a secure facility and who:

21 (a) Has pled guilty or been found guilty, or been found not guilty by reason of mental  
22 disease or defect pursuant to section 552.030 of a sexually violent offense; or

23 (b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and  
24 statutes in effect before August 13, 1980.

632.498. 1. Each person committed pursuant to sections 632.480 to 632.513 shall have  
2 a current examination of the person's mental condition made once every year by the director of  
3 the department of mental health or designee. The yearly report shall be provided to the court that  
4 committed the person pursuant to sections 632.480 to 632.513. The court shall conduct an  
5 annual review of the status of the committed person. The court shall not conduct an annual  
6 review of a person's status if he or she has been conditionally released pursuant to section  
7 632.505.

8 2. Nothing contained in sections 632.480 to 632.513 shall prohibit the person from  
9 otherwise petitioning the court for release. The director of the department of mental health shall  
10 provide the committed person who has not been conditionally released with an annual written  
11 notice of the person's right to petition the court for release over the director's objection. The  
12 notice shall contain a waiver of rights. The director shall forward the notice and waiver form to  
13 the court with the annual report.

14 3. If the committed person petitions the court for conditional release over the director's  
15 objection, the petition shall be served upon the court that committed the person, the **prosecuting**  
16 **attorney of the jurisdiction into which the committed person is to be released,** the director  
17 of the department of mental health, the head of the facility housing the person, and the attorney  
18 general.

19 4. The committed person shall have a right to have an attorney represent the person at  
20 the hearing but the person is not entitled to be present at the hearing. If the court at the hearing  
21 determines by a preponderance of the evidence that the person no longer suffers from a mental  
22 abnormality that makes the person likely to engage in acts of sexual violence if released, then the  
23 court shall set a trial on the issue.

24 5. The trial shall be governed by the following provisions:

25 (1) The committed person shall be entitled to be present and entitled to the benefit of all  
26 constitutional protections that were afforded the person at the initial commitment proceeding;

27 (2) The attorney general shall represent the state and shall have a right to a jury trial and  
28 to have the committed person evaluated by a psychiatrist or psychologist not employed by the  
29 department of mental health or the department of corrections. In addition, the person may be  
30 examined by a consenting psychiatrist or psychologist of the person's choice at the person's own  
31 expense;

32 (3) The burden of proof at the trial shall be upon the state to prove by clear and  
33 convincing evidence that the committed person's mental abnormality remains such that the  
34 person is not safe to be at large and if released is likely to engage in acts of sexual violence. If  
35 such determination is made by a jury, the verdict must be unanimous;

36 (4) If the court or jury finds that the person's mental abnormality remains such that the  
37 person is not safe to be at large and if released is likely to engage in acts of sexual violence, the  
38 person shall remain in the custody of the department of mental health in a secure facility  
39 designated by the director of the department of mental health. If the court or jury finds that the  
40 person's mental abnormality has so changed that the person is not likely to commit acts of sexual  
41 violence if released, the person shall be conditionally released as provided in section 632.505.

632.505. 1. Upon determination by a court or jury that the person's mental abnormality  
2 has so changed that the person is not likely to commit acts of sexual violence if released, the  
3 court shall place the person on conditional release pursuant to the terms of this section. The  
4 primary purpose of conditional release is to provide outpatient treatment and monitoring to  
5 prevent the person's condition from deteriorating to the degree that the person would need to be  
6 returned to a secure facility designated by the director of the department of mental health.

7 2. The department of mental health is authorized to enter into an interagency agreement  
8 with the department of corrections for the supervision of persons granted a conditional release  
9 by the court. In conjunction with the department of corrections, the department of mental health  
10 shall develop a conditional release plan which contains appropriate conditions for the person to  
11 be released. The plan shall address the person's need for supervision, counseling, medication,  
12 community support services, residential services, vocational services, and alcohol and drug  
13 treatment. The department of mental health shall submit the proposed plan for conditional  
14 release to the court.

15 3. The court shall review the plan and determine the conditions that it deems necessary  
16 to meet the person's need for treatment and supervision and to protect the safety of the public.  
17 The court shall order that the person shall be subject to the following conditions and other  
18 conditions as deemed necessary:

19 (1) Maintain a residence approved by the department of mental health and not change  
20 residence unless approved by the department of mental health;

- 21           (2) Maintain employment unless engaged in other structured activity approved by the  
22 department of mental health;
- 23           (3) Obey all federal and state laws;
- 24           (4) Not possess a firearm or dangerous weapon;
- 25           (5) Not be employed or voluntarily participate in an activity that involves contact with  
26 children without approval of the department of mental health;
- 27           (6) Not consume alcohol or use a controlled substance except as prescribed by a treating  
28 physician and to submit, upon request, to any procedure designed to test for alcohol or controlled  
29 substance use;
- 30           (7) Not associate with any person who has been convicted of a felony unless approved  
31 by the department of mental health;
- 32           (8) Not leave the state without permission of the department of mental health;
- 33           (9) Not have contact with specific persons, including but not limited to, the victim or  
34 victim's family, as directed by the department of mental health;
- 35           (10) Not have any contact with any child without specific approval by the department  
36 of mental health;
- 37           (11) Not possess material that is pornographic, sexually oriented, or sexually stimulating;
- 38           (12) Not enter a business providing sexually stimulating or sexually oriented  
39 entertainment;
- 40           (13) Submit to a polygraph, plethysmograph, or other electronic or behavioral  
41 monitoring or assessment;
- 42           (14) Submit to electronic monitoring which may be based on a global positioning system  
43 or other technology which identifies and records a person's location at all times;
- 44           (15) Attend and fully participate in assessment and treatment as directed by the  
45 department of mental health;
- 46           (16) Take all psychiatric medications as prescribed by a treating physician;
- 47           (17) Authorize the department of mental health to access and obtain copies of  
48 confidential records pertaining to evaluation, counseling, treatment, and other such records and  
49 provide the consent necessary for the release of any such records;
- 50           (18) Pay fees to the department of mental health and the department of corrections to  
51 cover the costs of services and monitoring;
- 52           (19) Report to or appear in person as directed by the department of mental health and the  
53 department of corrections, and to follow all directives of such departments;
- 54           (20) Comply with any registration requirements under sections 589.400 to 589.425; and  
55           (21) Comply with any other conditions that the court determines to be in the best interest  
56 of the person and society.

57           4. The court shall provide a copy of the order containing the conditions of release to the  
58 person, the attorney general, the department of mental health, the head of the facility housing the  
59 person, and the department of corrections.

60           5. A person who is conditionally released and supervised by a probation and parole  
61 officer employed by the department of corrections remains under the control, care, and treatment  
62 of the department of mental health.

63           6. The court may modify conditions of release upon its own motion or upon the petition  
64 of the department of mental health, the department of corrections, or the person on conditional  
65 release.

66           7. The following provisions shall apply to violations of conditional release:

67           (1) If any probation and parole officer has reasonable cause to believe that a person on  
68 conditional release has violated a condition of release or that the person is no longer a proper  
69 subject for conditional release, the officer may issue a warrant for the person's arrest. The  
70 warrant shall contain a brief recitation of the facts supporting the officer's belief. The warrant  
71 shall direct any peace officer to take the person into custody immediately so that the person can  
72 be returned to a secure facility;

73           (2) If the director of the department of mental health or the director's designee has  
74 reasonable cause to believe that a person on conditional release has violated a condition of  
75 release or that the person is no longer a proper subject for conditional release, the director or the  
76 director's designee may request that a peace officer take the person into custody immediately, or  
77 request that a probation and parole officer or the court which ordered the release issue a warrant  
78 for the person's arrest so that the person can be returned to a secure facility;

79           (3) At any time during the period of a conditional release, the court which ordered the  
80 release may issue a notice to the released person to appear to answer a charge of a violation of  
81 the terms of the release and the court may issue a warrant of arrest for the violation. Such notice  
82 shall be personally served upon the released person. The warrant shall authorize the return of  
83 the released person to the custody of the court or to the custody of the director of mental health  
84 or the director's designee;

85           (4) No peace officer responsible for apprehending and returning the person to the facility  
86 upon the request of the director of the department of mental health or the director's designee or  
87 a probation and parole officer shall be civilly liable for apprehending or transporting such person  
88 to the facility so long as such duties were performed in good faith and without negligence;

89           (5) The department of mental health shall promptly notify the court that the person has  
90 been apprehended and returned to a secure facility;

91 (6) Within seven days of the person's return to a secure facility, the department of mental  
92 health must either request that the attorney general file a petition to revoke the person's  
93 conditional release or continue the person on conditional release;

94 (7) If a petition to revoke conditional release is filed, the person shall remain in custody  
95 until a hearing is held on the petition. The hearing shall be given priority on the court's docket.  
96 If upon hearing the evidence, the court finds by preponderance of the evidence that the person  
97 has violated a condition of release and that the violation of the condition was sufficient to render  
98 the person no longer suitable for conditional release, the court shall revoke the conditional  
99 release and order the person returned to a secure facility designated by the director of the  
100 department of mental health. If the court determines that revocation is not required, the court  
101 may modify or increase the conditions of release or order the person's release on the existing  
102 conditions of release;

103 (8) A person whose conditional release has been revoked may petition the court for  
104 subsequent release pursuant to sections 632.498, 632.501, and 632.504 no sooner than six  
105 months after the person's return to a secure facility.

106 8. The department of mental health may enter into agreements with the department of  
107 corrections and other departments and may enter into contracts with private entities for the  
108 purpose of supervising a person on conditional release.

109 9. The department of mental health and the department of corrections may require a  
110 person on conditional release to pay a reasonable fee to cover the costs of providing services and  
111 monitoring while the person is released. Each department may adopt rules with respect to  
112 establishing, waiving, collecting, and using fees. Any rule or portion of a rule, as that term is  
113 defined in section 536.010, that is created under the authority delegated in this section shall  
114 become effective only if it complies with and is subject to all of the provisions of chapter 536  
115 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of  
116 the powers vested with the general assembly pursuant to chapter 536 to review, to delay the  
117 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the  
118 grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be  
119 invalid and void.

120 10. In the event a person on conditional release escapes from custody, the department  
121 of mental health shall notify the court, the department of corrections, the attorney general, the  
122 chief law enforcement officer of the county or city not within a county from where the person  
123 escaped or absconded, and any other persons necessary to protect the safety of the public or to  
124 assist in the apprehension of the person. The attorney general shall notify victims and witnesses.  
125 Upon receiving such notice, the attorney general shall file escape from commitment charges  
126 under section 575.195.

127           **11. When a person who has been granted conditional release under this section is**  
128 **being electronically monitored and remains in the county, city, town, or village where the**  
129 **facility is located that released the person, the department of corrections shall provide,**  
130 **upon request, the chief of the local law enforcement agency of such county, city, town, or**  
131 **village with access to the information gathered by the global positioning system or other**  
132 **technology used to monitor the person. This access shall include, but not be limited to, any**  
133 **user name or password needed to view any real-time or recorded information about the**  
134 **person, and any alert or message generated by the technology. The access shall continue**  
135 **while the person is being electronically monitored and is living in the county, city, town,**  
136 **or village where the facility that released the offender is located. The information obtained**  
137 **by the chief of the local law enforcement agency shall be closed and shall not be disclosed**  
138 **to any person outside the law enforcement agency except upon an order of the court**  
139 **supervising the conditional release.**

          Section B. Because immediate action is necessary to protect the victims of sexual violent  
2 offenses the repeal and reenactment of section 632.480 of section A of this act is deemed  
3 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is  
4 hereby declared to be an emergency act within the meaning of the constitution, and the repeal  
5 and reenactment of section 632.480 of section A of this act shall be in full force and effect upon  
6 its passage and approval.

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