

FIRST REGULAR SESSION

SENATE BILL NO. 188

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 22, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0939S.02I

AN ACT

To repeal section 632.498, RSMo, and to enact in lieu thereof one new section relating to petitions for conditional release of sexually violent predators.

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

Section A. Section 632.498, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 632.498, to read as follows:

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.

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