

SECOND REGULAR SESSION

# HOUSE BILL NO. 1263

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TILLEY.

Read 1st time January 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4294L.01I

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### 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.

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Section A. Sections 632.484, 632.489, and 632.495, RSMo, are repealed and three new  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

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

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

5 (2) Has been in the custody of an agency with jurisdiction within the preceding ten years  
6 and may meet the criteria of a sexually violent predator;

7  
8 the attorney general may file a petition for detention and evaluation with the probate division of  
9 the court in which the person was convicted, or committed pursuant to chapter 552, RSMo,  
10 alleging the respondent may meet the definition of a sexually violent predator and should be  
11 detained for evaluation for a period of up to nine days. The written notice shall include the  
12 previous conviction record of the person, a description of the recent overt act, if applicable, and  
13 any other evidence which tends to show the person to be a sexually violent predator. The

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.

14 attorney general shall provide notice of the petition to the prosecuting attorney of the county  
15 where the petition was filed.

16 2. Upon a determination by the court that the person may meet the definition of a  
17 sexually violent predator, the court shall order the detention and transport of such person to a  
18 secure facility to be determined by the department of mental health **under provisions of section**  
19 **632.495**. The attorney general shall immediately give written notice of such to the department  
20 of mental health.

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

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

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

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

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

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

8         2. Within seventy-two hours after a person is taken into custody pursuant to subsection  
9 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided  
10 with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as  
11 to whether the detained person is a sexually violent predator. At this hearing the court shall:

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

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

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

18             (1) To be represented by counsel;

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

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

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

23         4. If the probable cause determination is made, the court shall direct that the person be  
24 transferred to an appropriate secure facility, including, but not limited to, a county jail, for an  
25 evaluation as to whether the person is a sexually violent predator. If the person is ordered to the  
26 department of mental health, the director of the department of mental health shall determine the  
27 appropriate secure facility to house the person. The court shall direct the director of the  
28 department of mental health to have the person examined by a psychiatrist or psychologist as  
29 defined in section 632.005 who was not a member of the multidisciplinary team that previously  
30 reviewed the person's records. In addition, such person may be examined by a consenting  
31 psychiatrist or psychologist of the person's choice at the person's own expense. Any examination  
32 shall be conducted in the facility in which the person is confined. Any examinations ordered  
33 shall be made at such time and under such conditions as the court deems proper; except that, if  
34 the order directs the director of the department of mental health to have the person examined,  
35 the director shall determine the time, place and conditions under which the examination shall be  
36 conducted. The psychiatrist or psychologist conducting such an examination shall be authorized  
37 to interview family and associates of the person being examined, as well as victims and  
38 witnesses of the person's offense or offenses, for use in the examination unless the court for good  
39 cause orders otherwise. The psychiatrist or psychologist shall have access to all materials  
40 provided to and considered by the multidisciplinary team and to any police reports related to  
41 sexual offenses committed by the person being examined. Any examination performed pursuant

42 to this section shall be completed and filed with the court within sixty days of the date the order  
43 is received by the director or other evaluator unless the court for good cause orders otherwise.  
44 One examination shall be provided at no charge by the department. All costs of any subsequent  
45 evaluations shall be assessed to the party requesting the evaluation.

632.495. The court or jury shall determine whether, beyond a reasonable doubt, the  
2 person is a sexually violent predator. If such determination that the person is a sexually violent  
3 predator is made by a jury, such determination shall be by unanimous verdict of such jury. Any  
4 determination as to whether a person is a sexually violent predator may be appealed. If the court  
5 or jury determines that the person is a sexually violent predator, the person shall be committed  
6 to the custody of the director of the department of mental health for control, care and treatment  
7 until such time as the person's mental abnormality has so changed that the person is safe to be  
8 at large. Such control, care and treatment shall be provided by the department of mental health.  
9 At all times, **persons ordered to the department of mental health after a determination by**  
10 **the court that such persons may meet the definition of a sexually violent predator, persons**  
11 **ordered to the department of mental health after a finding of probable cause under section**  
12 **632.489, and** persons committed for control, care and treatment by the department of mental  
13 health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the  
14 director of the department of mental health and such persons shall be segregated at all times from  
15 any other patient under the supervision of the director of the department of mental health. The  
16 department of mental health shall not place or house [an offender determined to be a sexually  
17 violent predator] **a person ordered to the department of mental health after a determination**  
18 **by the court that such person may meet the definition of a sexually violent predator, a**  
19 **person ordered to the department of mental health after a finding of probable cause under**  
20 **section 632.489, or a person committed for control, care, and treatment by the department**  
21 **of mental health,** pursuant to sections 632.480 to 632.513, with other mental health patients  
22 who have not been determined to be sexually violent predators. The department of mental health  
23 is authorized to enter into an interagency agreement with the department of corrections for the  
24 confinement of such persons. Such persons who are in the confinement of the department of  
25 corrections pursuant to an interagency agreement shall be housed and managed separately from  
26 offenders in the custody of the department of corrections, and except for occasional instances of  
27 supervised incidental contact, shall be segregated from such offenders. If the court or jury is not  
28 satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall  
29 direct the person's release. Upon a mistrial, the court shall direct that the person be held at an  
30 appropriate secure facility, including, but not limited to, a county jail, until another trial is  
31 conducted. If the person is ordered to the department of mental health, the director of the  
32 department of mental health shall determine the appropriate secure facility to house the person.

- 33 Any subsequent trial following a mistrial shall be held within ninety days of the previous trial,  
34 unless such subsequent trial is continued as provided in section 632.492.

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