

SECOND REGULAR SESSION

HOUSE BILL NO. 2032

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES YOUNG (Sponsor), DOUGHERTY, FAITH, TALBOY,
WILSON (130), SCHNEIDER, NORR AND BAKER (25) (Co-sponsors).

Read 1st time February 6, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4837L.02I

AN ACT

To repeal sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 633.185, and 633.190, RSMo, and to enact in lieu thereof eight new sections relating to the term "mental retardation" as used by the division of mental retardation and developmental disabilities.

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

Section A. Sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 633.185, 2 and 633.190, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known 3 as sections 630.003, 630.635, 633.005, 633.010, 633.029, 633.180, 633.185, and 633.190, to 4 read as follows:

630.003. 1. There is hereby created a department of mental health to be headed by a 2 mental health commission who shall appoint a director, by and with the advice and consent of 3 the senate. The director shall be the administrative head of the department and shall serve at the 4 pleasure of the commission and be compensated as provided by law for the director, division of 5 mental health. All employees of the department shall be selected in accordance with chapter 36, 6 RSMo.

7 2. (1) The "State Mental Health Commission", composed of seven members, is the 8 successor to the former state mental health commission and it has all the powers, duties and 9 responsibilities of the former commission. All members of the commission shall be appointed

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.

10 by the governor, by and with the advice and consent of the senate. None of the members shall
11 otherwise be employed by the state of Missouri.

12 (2) Three of the commission members first appointed shall be appointed for terms of
13 four years, and two shall be appointed for terms of three years, and two shall be appointed for
14 a term of two years. The governor shall designate, at the time the appointments are made, the
15 length of the term of each member so appointed. Thereafter all terms shall be for four years.

16 (3) At least two of the members of the commission shall be physicians, one of whom
17 shall be recognized as an expert in the field of the treatment of nervous and mental diseases, and
18 one of whom shall be recognized as an expert in the field of [mental retardation or of other]
19 developmental disabilities. At least two of the members of the commission shall be
20 representative of persons or groups who are consumers having substantial interest in the services
21 provided by the division, one of whom shall represent the mentally retarded or developmentally
22 disabled and one of whom shall represent those persons being treated for nervous and mental
23 diseases. Of the other three members at least one must be recognized for his **or her** expertise
24 in general business management procedures, and two shall be recognized for their interest and
25 expertise in dealing with alcohol/drug abuse problems, or community mental health services.

26 3. The provisions of sections 191.120, 191.125, 191.130, 191.140, 191.150, 191.160,
27 191.170, 191.180, 191.190, 191.200, 191.210, RSMo, and others as they relate to the division
28 of mental health not previously reassigned by executive reorganization plan number 2 of 1973
29 as submitted by the governor under chapter 26, RSMo, are transferred by specific type transfer
30 from the department of public health and welfare to the department of mental health. The
31 division of mental health, department of health and welfare, chapter 202, RSMo, and others are
32 abolished and all powers, duties and functions now assigned by law to the division, the director
33 of the divisions of mental health or any of the institutions or officials of the division are
34 transferred by type I transfer to the department of mental health.

35 4. The Missouri institute of psychiatry, which is under the board of curators of the
36 University of Missouri is hereafter to be known as the "Missouri Institute of Mental Health".
37 The purpose of the institute will be that of conducting research into improving services for
38 persons served by the department of mental health for fostering the training of psychiatric
39 residents in public psychiatry and for fostering excellence in mental health services through
40 employee training and the study of mental health policy and ethics. To assist in this training,
41 hospitals operated by and providers contracting with the department of mental health may be
42 used for the same purposes and under the same arrangements as the board of curators of the
43 University of Missouri utilizes with other hospitals in the state in supervising residency training
44 for medical doctors. Appropriations requests for the Missouri institute of mental health shall be
45 jointly developed by the University of Missouri and the department of mental health. All
46 appropriations for the Missouri institute of mental health shall be made to the curators of the

47 University of Missouri but shall be submitted separately from the appropriations of the curators
48 of the University of Missouri.

49 5. There is hereby established within the department of mental health a division of
50 [mental retardation and] developmental disabilities. The director of the division shall be
51 appointed by the director of the department. The division shall administer all state facilities
52 under the direction and authority of the department director. The Marshall Habilitation Center,
53 the Higginsville Habilitation Center, the Bellefontaine Habilitation Center, the Nevada
54 Habilitation Center, the St. Louis Developmental Disabilities Treatment Centers, and the
55 regional centers located at Albany, Columbia, Hannibal, Joplin, Kansas City, Kirksville, Poplar
56 Bluff, Rolla, St. Louis, Sikeston and Springfield and other similar facilities as may be
57 established, are transferred by type I transfer to the division of [mental retardation and]
58 developmental disabilities. **Any alteration of the title of the division established in this**
59 **subsection shall not be construed to change the criteria by which the division makes**
60 **eligibility determinations for its programs and services.**

61 6. All the duties, powers and functions of the advisory council on [mental retardation
62 and] community health centers, sections 202.664 to 202.666, RSMo, are hereby transferred by
63 type I transfer to the division of [mental retardation and] developmental disabilities of the
64 department of mental health. The advisory council on [mental retardation and] community
65 health centers shall be appointed by the division director.

66 7. The advisory council on [mental retardation and] developmental disabilities heretofore
67 established by executive order and all of the duties, powers and functions of the advisory council
68 including the responsibilities of the provision of the council in regard to the Federal
69 Development Disabilities Law (P.L. 91-517) and all amendments thereto are transferred by type
70 I transfer to the division of [mental retardation and] developmental disabilities. The advisory
71 council on [mental retardation and] developmental disabilities shall be appointed by the director
72 of the division of [mental retardation and] developmental disabilities.

73 8. The advisory council on alcoholism and drug abuse, chapter 202, RSMo, is transferred
74 by type II transfer to the department of mental health and the members of the advisory council
75 shall be appointed by the mental health director.

630.635. 1. If a resident in a [mental retardation facility] **habilitation center**, or [his]
2 **the resident's** parent if he **or she** is a minor, or his **or her** legal guardian refuses to consent to
3 the proposed placement, the head of the [mental retardation facility] **habilitation center** may
4 petition, under the procedures in section 633.135, RSMo, the director of the division of [mental
5 retardation and] developmental disabilities to determine whether the proposed placement is
6 appropriate under chapter 633, RSMo.

7 2. If a patient in a mental health facility, or [his] **the patient's** parent if he **or she** is a
8 minor, or his **or her** legal guardian refuses to consent to the proposed placement, the head of the

9 mental health facility may petition the director of the division of comprehensive psychiatric
10 services to determine whether the proposed placement is appropriate under sections 630.610,
11 630.615 and 630.620.

12 3. The director of the division of comprehensive psychiatric services shall refer the
13 petition to the chairman of the state advisory council for his division who shall appoint and
14 convene a review panel composed of three members. At least one member of the panel shall be
15 a family member or guardian of a patient who resides in a mental health facility operated by the
16 department. The remaining members of the panel shall be persons who are from
17 nongovernmental organizations or groups concerned with the prevention of mental disorders,
18 evaluation, care, treatment or rehabilitation of persons affected by the same conditions as the
19 patient the department seeks to place and who are familiar with services and service needs of
20 persons in mental health facilities operated by the department. No member of the panel shall be
21 an officer or employee of the department.

22 4. After prompt notice and hearing, the panel shall determine whether the proposed
23 placement is appropriate under sections 630.610, 630.615 and 630.620. The hearing shall be
24 electronically recorded for purposes of obtaining a transcript. The council shall forward the tape
25 recording, recommended findings of fact, conclusions of law, and decision to the director who
26 shall enter findings of fact, conclusions of law, and the final decision. Notice of the director's
27 decision shall be sent to the patient, or [his] **the patient's** parent if he is a minor, or his **or her**
28 guardian by registered mail, return receipt requested. The director shall expedite this review in
29 all respects.

30 5. If the patient, or [his] **the patient's** parent if he **or she** is a minor, or his **or her**
31 guardian disagrees with the decision of the director, he **or she** may appeal the decision, within
32 thirty days after notice of the decision is sent, to the circuit court of the county where the patient
33 or resident, or [his] **the patient's or resident's** parent if he **or she** is a minor, or his **or her**
34 guardian resides. The court shall review the record, proceedings and decision of the director not
35 only under the provisions of chapter 536, RSMo, but also as to whether or not the head of the
36 facility or the department sustained its burden of proof that the proposed placement is appropriate
37 under sections [630.110, 630.115 and 630.120] **630.610, 630.615, and 630.620**. The court shall
38 expedite this review in all respects. Notwithstanding the provisions of section 536.140, RSMo,
39 a court may, for good cause shown, hear and consider additional competent and material
40 evidence.

41 6. The notice and procedure for the hearing by the panel shall be in accordance with
42 chapter 536, RSMo.

43 7. In all proceedings either before the panel or before the circuit court, the burden of
44 proof shall be upon the head of the facility to demonstrate by a preponderance of evidence that

45 the proposed placement is appropriate under the criteria set forth in sections 630.610, 630.615
46 and [630.120] **630.620**.

47 8. Pending the convening of the hearing panel and the final decision of the director or
48 the court if the director's decision is appealed, the department shall not place or discharge the
49 patient from a facility except that the department may temporarily transfer such patient in the
50 case of a medical emergency.

51 9. There shall be no retaliation against any state employee as the result of a good faith
52 decision to place the patient which is appealed and who testifies during a hearing or otherwise
53 provides information or evidence in regard to a proposed placement.

633.005. As used in this chapter, unless the context clearly requires otherwise, the
2 following terms shall mean:

3 (1) "Comprehensive evaluation", a study, including a sequence of observations and
4 examinations, of an individual leading to conclusions and recommendations formulated jointly
5 by an interdisciplinary team of persons with special training and experience in the diagnosis and
6 habilitation of the mentally retarded and developmentally disabled;

7 (2) "Division", the division of [mental retardation and] developmental disabilities of the
8 department of mental health;

9 (3) "Division director", the director of the division of [mental retardation and]
10 developmental disabilities of the department of mental health, or his designee;

11 (4) "[Mental retardation facility] **Habilitation center**", a private or department facility,
12 other than a regional center, which admits persons who are mentally retarded or developmentally
13 disabled for residential habilitation and other services and which is qualified or licensed as such
14 by the department pursuant to chapter 630, RSMo. Such terms shall include, but shall not be
15 limited to, habilitation centers and private or public residential facilities for persons who are
16 developmentally disabled;

17 (5) "Regional center", an entity so designated by the department to provide, directly or
18 indirectly, for comprehensive [mental retardation and] developmental disability services under
19 this chapter in a particular region;

20 (6) "Respite care", temporary and short-term residential care, sustenance and supervision
21 of a mentally retarded or developmentally disabled person who otherwise resides in a family
22 home;

23 (7) "State advisory council", the Missouri advisory council on [mental retardation and]
24 developmental disabilities as created in section 633.020.

633.010. 1. The division of [mental retardation and] developmental disabilities[, created
2 by the omnibus reorganization act of 1974, section 9, appendix B, RSMo,] shall be a division of
3 the department. The division shall have the responsibility of insuring that [mental retardation
4 and] developmental disabilities prevention, evaluation, care, habilitation and rehabilitation

5 services are accessible, wherever possible. The division shall have and exercise supervision of
6 division residential facilities, day programs and other specialized services operated by the
7 department, and oversight over facilities, programs and services funded or licensed by the
8 department.

9 2. The powers, functions and duties of the division shall include the following:

10 (1) Provision of funds for the planning and implementation of accessible programs to
11 serve persons affected by [mental retardation or] developmental disabilities;

12 (2) Review of [mental retardation and] developmental disabilities plans submitted to
13 receive state and federal funds allocated by the department;

14 (3) Provision of technical assistance and training to community-based programs to assist
15 in the planning and implementation of quality services;

16 (4) Assurance of program quality in compliance with such appropriate standards as may
17 be established by the department;

18 (5) Sponsorship and encouragement of research into the causes, effects, prevention,
19 habilitation and rehabilitation of [mental retardation and] developmental disabilities;

20 (6) Provision of public information relating to [mental retardation and] developmental
21 disabilities and their habilitation;

22 (7) Cooperation with nonstate governmental agencies and the private sector in
23 establishing, conducting, integrating and coordinating [mental retardation and] developmental
24 disabilities programs and projects;

25 (8) Cooperation with other state agencies to encourage appropriate health facilities to
26 serve, without discrimination, persons who are mentally retarded or developmentally disabled
27 who require medical care and to provide them with adequate and appropriate services;

28 (9) Participation in developing and implementing a statewide plan to alleviate problems
29 relating to [mental retardation and] developmental disabilities and to overcome the barriers to
30 their solutions;

31 (10) Encouragement of coordination of division services with other divisions of the
32 department and other state agencies;

33 (11) Encouragement of the utilization, support, assistance and dedication of volunteers
34 to assist persons affected by [mental retardation and] developmental disabilities to be accepted
35 and integrated into normal community activities;

36 (12) Evaluation, or the requirement of the evaluation, including the collection of
37 appropriate necessary information, of [mental retardation or] developmental disabilities programs
38 to determine their cost-and-benefit effectiveness;

39 (13) Participation in developing standards for residential facilities, day programs and
40 specialized services operated, funded or licensed by the department for persons affected by
41 [mental retardation or] developmental disabilities.

633.029. All persons determined eligible for services provided by the division of [mental
2 retardation and] developmental disabilities prior to January 1, 1991, shall be eligible for services
3 on the basis of their earlier determination of eligibility without regard to their eligibility status
4 under the definition of developmental disability contained in section 630.005, RSMo.

633.180. 1. A family with an annual income of sixty thousand dollars or less which has
2 a child with a developmental disability residing in the family home shall be eligible to apply for
3 a cash stipend from the division of [mental retardation and] developmental disabilities in an
4 amount to be determined by the regional advisory council. Such cash stipend amount shall not
5 exceed the maximum monthly federal Supplemental Security Income payment for an individual
6 with a developmental disability who resides alone. Such stipend shall be paid on a monthly basis
7 and shall be considered a benefit and not income to the family. The stipend shall be used to
8 purchase goods and services for the benefit of the family member with a developmental
9 disability. Such goods and services may include, but are not limited to:

- 10 (1) Respite care;
- 11 (2) Personal and attendant care;
- 12 (3) Architectural and vehicular modifications;
- 13 (4) Health- and mental health-related costs not otherwise covered;
- 14 (5) Equipment and supplies;
- 15 (6) Specialized nutrition and clothing;
- 16 (7) Homemaker services;
- 17 (8) Transportation;
- 18 (9) Integrated community activities;
- 19 (10) Training and technical assistance; and
- 20 (11) Individual, family and group counseling.

21 2. Application for such stipend shall be made to the appropriate regional center. The
22 regional center shall determine the eligibility of the individual to receive services from the
23 division and the division shall forward the application to the regional advisory council to
24 determine the amount of the stipend which may be approved by the council.

25 3. The family support program shall be funded by moneys appropriated by the general
26 assembly; however, the family support program shall not supplant other programs funded
27 through the division of [mental retardation and] developmental disabilities.

633.185. 1. The division of [mental retardation and] developmental disabilities, subject
2 to appropriation by the general assembly, is authorized to implement and administer, as part of
3 the family support program, a family support loan program, which shall provide a family with
4 an annual income of sixty thousand dollars or less which has an individual with a developmental
5 disability residing in the home, with low-interest, short-term loans to purchase goods and
6 services for the family member with a developmental disability.

7 2. Interest rates on loans made pursuant to the provisions of this section shall be no more
8 than one percent above the prime interest rate as determined by the federal reserve system on the
9 date the loan is approved. Loans may be for a maximum period of sixty months and the
10 outstanding loan amount to any family may be no more than ten thousand dollars.

11 3. Applications for loans shall be made to the appropriate regional center. The regional
12 center shall determine the eligibility of the individual to receive services from the division and
13 the division shall forward the application to the regional advisory council to determine the
14 amount of the loan which may be approved by the council.

15 4. There is hereby created in the state treasury for use by the department of mental health
16 a fund to be known as the "Family Support Loan Program Fund". Moneys deposited in the fund
17 shall be appropriated to the director of the department of mental health to be used for loans
18 pursuant to this section. The fund shall consist of moneys appropriated by the general assembly
19 for starting the fund and money otherwise deposited according to law. Any unexpended balance
20 in the fund at the end of any biennium, not to exceed twice the annual loans made pursuant to
21 this act in the previous fiscal year, is exempt from the provisions of section 33.080, RSMo,
22 relating to the transfer of unexpended balances to the ordinary revenue fund.

 633.190. 1. The division of [mental retardation and] developmental disabilities, in
2 cooperation with the Missouri planning council for developmental disabilities, shall adopt
3 policies and procedures and, when necessary, shall promulgate rules and regulations regarding:

- 4 (1) Program guidelines and specifications;
- 5 (2) Additional duties of the regional advisory councils;
- 6 (3) Annual evaluation of services provided by each regional center, including an
7 assessment of consumer satisfaction;
- 8 (4) Coordination of the family support program and the use of its funds throughout the
9 state and within each region, with other publicly funded programs, including Medicaid;
- 10 (5) Methodology for allocating resources to families with the funds available;
- 11 (6) Resolution of grievances filed by families pertaining to actions of the family support
12 program;
- 13 (7) Methodology for outreach and education.

14 2. No rule or portion of a rule promulgated under the authority of this chapter shall
15 become effective unless it has been promulgated pursuant to the provisions of [section 536.024]
16 **chapter 536**, RSMo.

✓