

SECOND REGULAR SESSION

HOUSE BILL NO. 3370

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MAYHEW.

7260H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 478.004, RSMo, and to enact in lieu thereof ten new sections relating to court-ordered treatment.

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

Section A. Section 478.004, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 478.002, 478.004, 632.580, 632.585, 632.590, 632.593, 632.595, 632.600, 632.605, and 632.610, to read as follows:

478.002. 1. Notwithstanding any provision of law, all circuit and associate circuit courts shall offer and utilize a treatment court program for first-time felony offenders to address a substance use disorder prior to the offender entering a plea in court.

2. After completion of the treatment court program under subsection 1 of this section, any pending charges against the offender for the criminal case requiring treatment by the treatment court program shall be dismissed; however, the offender shall be required to pay any associated costs prior to the dismissal of the charges.

478.004. 1. The treatment court team shall, when practicable, conduct a meeting prior to each treatment court session to discuss and provide updated information regarding the treatment court participant. After determining his or her progress or lack thereof, the treatment court team shall consider the appropriate incentive or sanction to be applied, and the court shall make the final decision based on information presented in the meeting.

2. In any criminal case in the circuit, if it is determined that the defendant meets the criteria for eligibility in the treatment court, the judge presiding over the criminal case may order the defendant to the treatment court division for treatment:

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.

9 (1) Prior to the entry of the sentence, excluding suspended imposition of sentence
10 (SIS), if the prosecuting attorney consents;

11 (2) As a condition of probation; or

12 (3) Upon consideration of a motion to revoke probation.

13

14 **If the provisions of section 478.002 are not utilized, the provisions of this subsection may**
15 **be utilized.**

16 3. A circuit that has established a treatment court division under this chapter may
17 accept participants from any other jurisdiction in this state based upon either the residence of
18 the participant in the receiving jurisdiction or the unavailability of a treatment court in the
19 transferring jurisdiction. The transfer may occur at any time during the proceedings
20 including, but not limited to, prior to adjudication and during periods when the participant is
21 on probation. The receiving court shall have jurisdiction to impose a sentence including, but
22 not limited to, sanctions, incentives, incarceration, and phase changes. A transfer under this
23 subsection is not valid unless it is agreed to by the following:

24 (1) The parties to the action;

25 (2) The judge or commissioner of the transferring court; and

26 (3) The judge or commissioner of the receiving treatment court.

27

28 If the defendant assigned to treatment court is terminated from the treatment court, the case
29 shall be returned to the transferring court for disposition.

30 4. If a treatment court participant requires treatment for opioid or other substance
31 misuse or dependence, a treatment court shall not prohibit such participant from participating
32 in and receiving medication-assisted treatment under the care of a physician licensed in this
33 state to practice medicine. A treatment court participant shall not be required to refrain from
34 using medication-assisted treatment as a term or condition of successful completion of the
35 treatment court program.

36 5. A treatment court participant assigned to a treatment program for opioid or other
37 substance misuse or dependence shall not be in violation of the terms or conditions of the
38 treatment court on the basis of his or her participation in medication-assisted treatment under
39 the care of a physician licensed in this state to practice medicine.

632.580. The definitions set forth in section 632.005 shall apply to sections
2 **632.580 to 632.610. In addition, as used in sections 632.580 to 632.610, unless the context**
3 **clearly requires otherwise, the following terms mean:**

4 (1) "Assisted outpatient treatment", court-ordered involuntary outpatient
5 mental health care services that are provided by a mental health program under a

6 **treatment plan developed and monitored by a master's level mental health professional.**

7 **Such services may include, but are not limited to:**

8 **(a) Case management;**

9 **(b) Medication management;**

10 **(c) Therapy or counseling;**

11 **(d) Substance use treatment, if applicable;**

12 **(e) Crisis intervention services; and**

13 **(f) Assistance with housing, employment, or other community resources**
14 **necessary for an individual's stability;**

15 **(2) "Case manager", a mental health professional employed by a certified**
16 **community mental health center who is assigned to a respondent to oversee the**
17 **respondent's compliance with the outpatient treatment plan ordered by the court under**
18 **sections 632.580 to 632.610;**

19 **(3) "Community mental health center", the same meaning given to the term in**
20 **section 205.975;**

21 **(4) "Comprehensive mental health services", the same meaning given to the**
22 **term in section 205.975;**

23 **(5) "Local public health agency", a county health center board established**
24 **under chapter 205, a county health department, a combined city and county health**
25 **department or agency, a multicounty health department or agency, or any other county**
26 **health authority;**

27 **(6) "Petition", a petition for assisted outpatient treatment filed under section**
28 **632.585 or for continued assisted outpatient treatment filed under section 632.600;**

29 **(7) "Respondent", a person who is alleged in a petition to meet the criteria for**
30 **assisted outpatient treatment in section 632.590;**

31 **(8) "Service area", the same meaning given to the term in section 205.975.**

632.585. 1. A petition for an order authorizing assisted outpatient treatment
2 **may be filed by:**

3 **(1) The director, administrator, or treating physician of a mental health program**
4 **in which the respondent is hospitalized;**

5 **(2) The director, administrator, or treating physician of an emergency receiving**
6 **center in which the respondent is receiving services;**

7 **(3) A licensed physician from whom the respondent is receiving services;**

8 **(4) A registered professional nurse who is designated by a community mental**
9 **health center and approved by the department of mental health and from whom the**
10 **respondent is receiving services;**

11 **(5) A mental health professional from whom the respondent is receiving services;**

12 **(6) The appointed guardian or limited guardian of a ward who is the**
13 **respondent; or**

14 **(7) The department of health and senior services, the department of mental**
15 **health, or any local public health agency located within the judicial circuit of the court**
16 **having probate jurisdiction in which the petition is filed.**

17 **2. The petition may be filed in the court having probate jurisdiction in the**
18 **county in which the respondent is present or reasonably believed to be present or in the**
19 **court having probate jurisdiction in the county in which the respondent resides.**

20 **3. The petition shall allege under oath, without a notarization requirement, that**
21 **the petitioner has reason to believe that the respondent meets the criteria for assisted**
22 **outpatient treatment in section 632.590. The petition shall specify factual information**
23 **on which such belief is based and shall contain the names and addresses of all persons**
24 **known to the petitioner who have knowledge of such facts through personal observation.**

25 **4. No notarization shall be required for a petition or for any affidavits,**
26 **declarations, or other documents supporting a petition. The petition and any affidavits,**
27 **declarations, or other documents supporting the petition shall be subject to the**
28 **provisions of section 492.060 allowing for declaration under penalty of perjury.**

29 **5. The prosecuting attorney of the county in which a hearing on a petition takes**
30 **place shall represent the petitioner and file and prosecute in court all petitions. Such**
31 **duty shall be fulfilled by the county counselor in counties having a county counselor and**
32 **by the circuit attorney in any city not within a county.**

632.590. Following receipt of a petition and completion of the procedures
2 **required in section 632.593, a court may issue an order requiring a respondent to**
3 **participate in assisted outpatient treatment if:**

4 **(1) The respondent:**

5 **(a) Is eighteen years of age or older;**

6 **(b) Is suffering from a mental illness;**

7 **(c) Will not obtain treatment in the community voluntarily; and**

8 **(d) Is unable to make an informed decision to seek or to comply with voluntary**
9 **treatment; and**

10 **(2) Either:**

11 **(a) Because of the respondent's fulfillment of the criteria of subdivision (1) of**
12 **this section, the respondent requires treatment to prevent a deterioration in the**
13 **respondent's mental illness that would be likely to result in serious harm to the**
14 **respondent or others as described in section 632.305; or**

15 **(b) The respondent has a history of a lack of compliance with treatment for the**
16 **respondent's mental illness, and within the thirty-six months immediately preceding the**
17 **date of the filing of the petition such lack of compliance has either:**

18 **a. At least twice, been a significant factor in necessitating a civil detention period**
19 **for treatment instituted under section 632.120 or 632.305 or receipt of services in a**
20 **forensic or other mental health unit of any state or local correctional facility, not**
21 **including any period during which the respondent was hospitalized or incarcerated**
22 **immediately preceding the date of the filing of the petition; or**

23 **b. Resulted in one or more acts of violent behavior with the intention of causing**
24 **serious physical injury toward self or others or threats of, or attempts of, serious**
25 **physical harm to self or others, not including any period during which the respondent**
26 **was hospitalized or incarcerated immediately preceding the date of the filing of the**
27 **petition.**

632.593. 1. At the time of filing the petition, the court clerk shall set a date and
2 **time for the hearing, which shall take place within two judicial days of the filing of the**
3 **petition. An attorney shall be appointed to represent the respondent as required under**
4 **section 632.450 from the register of attorneys described in section 632.415. An attorney**
5 **so appointed shall be entitled to attorney's fees to the same extent as allowed under**
6 **section 632.415. The clerk shall promptly notify the respondent, the respondent's**
7 **attorney, the petitioner, and the petitioner's attorney of the date and time for the**
8 **hearing. The court shall not grant continuances except upon a showing of good and**
9 **sufficient cause.**

10 **2. The hearing shall be conducted in as informal a manner as may be consistent**
11 **with orderly procedure and in a physical setting not likely to have a harmful effect on**
12 **the respondent. The respondent shall have the following rights in addition to those**
13 **specified elsewhere:**

14 **(1) To be represented by an attorney;**

15 **(2) To present evidence on his or her own behalf;**

16 **(3) To cross-examine witnesses who testify against him or her;**

17 **(4) To remain silent;**

18 **(5) To view and copy all petitions and reports in the court file of his or her case;**

19 **(6) To have the hearing open or closed to the public as he or she elects;**

20 **(7) To be proceeded against according to the rules of evidence applicable to civil**
21 **judicial proceedings; and**

22 **(8) To have the hearing before a jury if requested by the respondent or his or her**
23 **attorney.**

24 **3. The respondent shall be present at the hearing unless the respondent's**
25 **physical condition is such that he or she cannot be present in the courtroom or if the**
26 **court determines that the respondent's conduct in the courtroom is so disruptive that**
27 **the proceedings cannot reasonably continue.**

28 **4. The burden of proof at the hearing shall be by clear and convincing evidence**
29 **and shall be upon the petitioner.**

30 **5. If the matter is tried before a jury, the jury shall determine and shall be**
31 **instructed only upon the issue of whether the respondent meets the criteria for assisted**
32 **outpatient treatment in section 632.590. The remaining procedures for the jury trial**
33 **shall be as in other civil matters.**

34 **6. The respondent shall not be required to file an answer or other responsive**
35 **pleading.**

36 **7. At the conclusion of the hearing, if the court or jury finds, based upon clear**
37 **and convincing evidence, that the respondent meets the criteria for assisted outpatient**
38 **treatment in section 632.590, and the court finds that a mental health program**
39 **appropriate to handle the respondent's condition has agreed to accept the respondent,**
40 **the court shall issue an order requiring the respondent to participate in assisted**
41 **outpatient treatment with the mental health program for a period not to exceed two**
42 **years.**

43 **8. At the conclusion of the hearing, if the court or jury does not find by clear and**
44 **convincing evidence that the respondent meets the criteria for assisted outpatient**
45 **treatment in section 632.590, the court shall dismiss the petition.**

46 **9. An order requiring the respondent to participate in assisted outpatient**
47 **treatment based on satisfaction of the provisions of subparagraph a. of paragraph (b) of**
48 **subdivision (2) of section 632.590 shall not be issued unless the court has considered, or**
49 **the jury has been instructed to consider, at least the following factors:**

50 **(1) The respondent's ability to access finances in order to obtain food or**
51 **medicine;**

52 **(2) The respondent's ability to obtain treatment for the respondent's medical**
53 **condition;**

54 **(3) The respondent's ability to access necessary resources in the community**
55 **without assistance;**

56 **(4) The degree to which there are risks to the respondent's safety;**

57 **(5) The likelihood that the respondent will decompensate without immediate**
58 **care or treatment;**

59 **(6) The respondent's previous attempts to inflict physical injury on self or**
60 **others;**

61 (7) The respondent's history of behavioral health treatment in the community;

62 (8) The respondent's patterns of decompensation in the past;

63 (9) The respondent's risk of being victimized or harmed by others; and

64 (10) The respondent's access to the means to inflict harm on self or others.

65 10. Nothing in this section shall prevent the court or jury from considering any
66 other factor not described in this section.

67 11. If requested by the respondent, the court shall appoint an available licensed
68 physician or licensed psychologist to examine the respondent and testify at the
69 respondent's request. If the respondent or the respondent's attorney so requests, the
70 court shall not appoint a licensed physician or licensed psychologist who is an employee
71 of any entity in which the respondent is hospitalized or receiving services or who is an
72 employee of any entity that filed the petition. The appointment procedures in section
73 632.420 shall apply to any appointment under this subsection.

74 12. The physician-patient privilege recognized by section 491.060 and the
75 psychologist-patient privilege recognized by section 337.055 shall be deemed waived in
76 proceedings under sections 632.580 to 632.610. The fact that such privileges have been
77 waived in accordance with this section shall not by itself waive the privileges in any
78 other proceeding, civil or criminal. The waiver of the privileges shall extend only to that
79 evidence that is directly material and relevant to the proceedings under sections 632.580
80 to 632.610.

81 13. Appeals from court orders under this section may be made as described in
82 section 632.430.

83 14. Assisted outpatient treatment shall not be deemed outpatient detention for
84 purposes of this chapter, and no provision of this chapter relating to the requirements
85 for inpatient or outpatient detention proceedings shall apply to assisted outpatient
86 treatment under sections 632.580 to 632.610 unless such provision has been specifically
87 incorporated into sections 632.580 to 632.610 by reference or otherwise.

88 15. The exemption from liability provided under section 632.440 relating to
89 detention procedures shall apply to assisted outpatient treatment under sections 632.580
90 to 632.610 in the same manner and to the same extent as if assisted outpatient treatment
91 were detention.

632.595. 1. The court shall assign a case manager from a certified community
2 mental health center to each respondent ordered to participate in assisted outpatient
3 treatment.

4 2. The case manager and the respondent shall report to the court at least once
5 every ninety days. The court may, at its discretion, request more frequent appearances.
6 The case manager shall immediately report to the court a substantial failure of the

7 respondent or the mental health program providing the assisted outpatient treatment to
8 comply with the conditions of the assisted outpatient treatment.

632.600. 1. The court order for assisted outpatient treatment shall expire at the
2 end of the period specified in the order unless a petition for an extension has been filed.
3 If any person or entity authorized to file a petition under section 632.585 determines
4 that a respondent requires further involuntary assisted outpatient treatment, the person
5 or entity shall file a petition for continued assisted outpatient treatment before the
6 expiration of the involuntary assisted outpatient treatment ordered by the court.

7 2. The procedure for obtaining an extension shall be the same as for obtaining
8 the original order, except that the thirty-six-month time period provided in paragraph
9 (b) of subdivision (2) of section 632.590 shall not be applicable in determining the
10 appropriateness of an extension.

632.605. 1. During the period of an order for assisted outpatient treatment, if
2 the mental health program or mental health professional who is providing the
3 respondent's assisted outpatient treatment determines that the respondent is not
4 complying with the court order, the mental health program or mental health
5 professional shall notify the court immediately.

6 2. If it comes to the attention of the court that a respondent subject to an order of
7 assisted outpatient treatment is not complying with the order, the court may require one
8 or more of the following, without a hearing:

9 (1) That the respondent be taken for evaluation to a community mental health
10 center providing comprehensive mental health services to individuals residing in the
11 service area in which the respondent resides;

12 (2) That the respondent be hospitalized in a psychiatric hospital for a period of
13 not more than ten days; and

14 (3) Upon recommendation by the (3) community mental health center providing
15 comprehensive mental health services to individuals residing in the service area in which
16 the respondent resides, that the individual be hospitalized for a period of more than ten
17 days, but not longer than the duration of the order for assisted outpatient treatment, or
18 not longer than ninety days, whichever is less.

19 3. The court may direct peace officers to transport the respondent to a
20 designated facility or a community mental health center, as applicable, and the court
21 may specify conditions under which the respondent may return to assisted outpatient
22 treatment before the order expires. Reimbursement for transportation costs shall be
23 allowed as provided under section 632.312.

24 4. A respondent hospitalized without a hearing as provided in subsection 2 of
25 this section may object to the hospitalization. Upon transfer of the respondent to the

26 hospital, the hospital shall notify the respondent of his or her right to object under this
27 section. Upon receipt of an objection to the hospitalization, the court shall schedule a
28 hearing for a determination that the individual requires hospitalization. The
29 respondent shall have all rights specified in section 632.593 at the hearing. The court
30 shall order the respondent discharged from hospitalization unless the court or jury
31 finds, based upon clear and convincing evidence, that the respondent requires
32 hospitalization as a result of the respondent's failure to comply with the order for
33 assisted outpatient treatment.

632.610. The office of state courts administrator shall submit an annual report to
2 the general assembly summarizing:

3 (1) The number of individuals subject to orders for assisted outpatient
4 treatment;

5 (2) Statistics on compliance and noncompliance rates with assisted outpatient
6 treatment; and

7 (3) Any impact that assisted outpatient treatment has on hospitalization and
8 incarceration rates.

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