Missouri's Sexually Violent Predator Act

Understanding the Process

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Introduction

In 1999, the State of Missouri enacted a law allowing for the commitment of certain sex offenders to the Department of Mental Health for care, control, and treatment. To qualify, offenders must have previously been found guilty of a certain type of sex offense, suffer from a mental condition that contributes to their offending, and present a risk to the community.

This guide will give you an overview of Missouri's sexually violent predator law, beginning with the referral of sex offenders to the Attorney General's Office for consideration, all the way through the commitment process and the offender's eventual release. In addition, you will find definitions of frequently used terms that will help you understand what is happening inside the courtroom and with the case.

It is my hope that this guide will provide you with the tools you need to navigate the system and empower you to participate in Missouri's court process.

Sincerely,

Eric Schmitt
Attorney General

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The Court Process

The State of Missouri can ask a court to commit certain sex offenders to the Department of Mental Health for care, control, and treatment.

The Attorney General's Office handles these cases on behalf of the State. The sex offenders, called "respondents" in court, have the right to be represented by a lawyer throughout the process.

The State has the burden of proving by clear and convincing evidence, to either a judge or a jury, that a sex offender meets criteria for commitment.

REFERRALS

The Attorney General's Office gets notice of a possible sexually violent predator in two ways:

1. From the Department of Corrections or the Department of Mental Health when a sex offender gets close to his release date; or

2. From a law enforcement agency when a sex offender has done something that creates a reasonable fear of harm of a sexually violent nature.

In most cases, the file will be reviewed by two committees:

1. The Multidisciplinary Team, with representatives from the Department of Corrections and the Department of Mental Health; and

2. The Prosecutors' Review Committee, with prosecutors from all over the state.

PETITION

Depending on the decision of the committees and the Attorney General, the Attorney General's Office can file a petition with the court asking for the commitment of a sex offender to the Department of Mental Health.

Sexually violent predator cases are heard in the probate court division of the county where the respondent committed a sex offense.

If the respondent is not already in a secure location, he will be taken into custody when the petition is filed and held in a county jail until trial.

PROBABLE CAUSE HEARING

The judge will hold a hearing to:

1. Make sure the State has the right person in custody; and

2. Decide whether the State's petition outlines enough evidence for the proceedings to continue.

Either side can present evidence at the hearing. The State can also ask the judge to make his or her decision on the basis of the petition alone.

If the judge does not find probable cause to continue the case to trial, the respondent is released.

MENTAL HEALTH EVALUATIONS

If the judge finds probable cause to take the case to trial, he or she orders the Department of Mental Health to evaluate the respondent. After that evaluation is complete, an expert hired by either side may do an evaluation as well.

These experts review records, conduct interviews, diagnose mental conditions, and determine the respondent's risk level.

DISCOVERY

The Attorney General's Office gathers records about the respondent's whole life. It sends the records to the experts doing the mental health evaluations and also to the respondent's lawyer.

> Psychological reports, drug and alcohol reports, medical records, treatment records, and victim impact statements that are filed in the case are sealed.

The records come from law enforcement, courts, prosecutors, mental health facilities, correctional facilities, probation and parole officers, drug and alcohol treatment centers, the military, juvenile detention facilities, medical facilities, and victims.

The respondent's attorney may want to have the State's experts and other witnesses testify before trial, at a deposition.

THE TRIAL

Either party can ask that a jury of twelve people hear the case. If a jury will hear the case, the jury is usually picked on the first day of trial, in a process known as "voir dire." The parties can also agree to have a judge hear the case instead. Either way, the structure of the proceedings is the same.

If the trial will be heard by a jury, the judge will read some instructions to the jury about how the trial will work.

The trial begins with the State explaining the evidence it will present at trial-an opening statement. The respondent's attorney can then do the same.

The State then presents its evidence, which can be testimony, paperwork, recordings, or photos. The respondent's attorney can then do the same.

If the trial is heard by a jury, the judge will then read more instructions to the jury that outline what the State is required to prove.

The State then argues why its evidence fulfills its burden of proof set out in the instructions the judge gave. The respondent's attorney can then argue why the State failed to meet its burden. The State may then respond to the arguments of the respondent's attorney.

The jurors then gather to decide the case. They are required to decide whether the State presented "clear and convincing evidence" that the respondent is a sexually violent predator. The jurors must all agree on their decision.

If they cannot decide whether the respondent is a sexually violent predator, the trial will end in a mistrial, by way of a "hung jury," and the case may be tried again.

If they decide the respondent is not a sexually violent predator, he is released.

If they decide the respondent is a sexually violent predator, the judge commits him to the custody of the Director of the Department of Mental Health for care, control, and treatment.

APPEALS

Either party can "appeal" the decision of the jury. An appeal claims that something went wrong during the process and the result was unfair. The Missouri Attorney General's Office also handles the appeals.

ANNUAL REVIEW

A sexually violent predator is evaluated by the Department of Mental Health every year. The Department of Mental Health may recommend that he stay committed or that he be released.

PETITION FOR RELEASE

A sexually violent predator can ask the court to be released whenever he wants, regardless of what the Department of Mental Health thinks. To do that, he files a petition with the court that committed him and requests a hearing.

At first, he must show the judge by a preponderance of the evidence that he has changed.

The Attorney General's Office notifies sex offense survivors of: the referral it receives, decisions of the committees, the filing of the petition to commit, the outcome of trial, respondent's request for release, and respondent's escape. Survivors have a right to be at court proceedings.

If he succeeds, the Attorney General's Office has to prove by clear and convincing evidence that he has not.

CONDITIONAL RELEASE

If the sexually violent predator is successful on his petition, he will be released under a set of conditions. These conditions establish outpatient treatment and monitoring to prevent a sexually violent predator's condition from worsening.

The Department of Mental Health develops a plan that addresses the sexually violent predator's need for supervision, counseling, medication, community support, housing, employment, and alcohol and drug treatment. The judge reviews the plan and picks the conditions he or she feels necessary.

The judge can change the conditions if asked by the Department of Corrections, the Department of Mental Health, or the sexually violent predator.

REVOCATION OF CONDITIONAL RELEASE

If the Department of Corrections or the Department of Mental Health has reasonable cause to believe that the sexually violent predator has violated a condition of release or that he is no longer appropriate for conditional release, it can ask the Attorney General's Office to file a petition with the court to revoke his release.

The judge will hold a hearing at which the State must prove by a preponderance of evidence that the sexually violent predator has violated a condition and is no longer appropriate for conditional release.

If the State is successful, the sexually violent predator's release will be revoked.

If the State is not successful, the sexually violent predator will remain on conditional release.

HABEAS CORPUS

Any time a sex offender is in custody, before or after trial, he or she can claim that he or she is being detained illegally and that he or she should be released. The offender can file a petition in both the state and federal courts. The offender can file multiple times in state court but only once in federal court.

If the offender is successful on his or her petition, he or she will be released.

If the offender is not successful on his or her petition, he or she will remain in custody.

Legal Terms

Adjudication or disposition: The final judgment in a case.

Appeal: The process that follows an adjudication in trial court in which a party asks the state appellate court to review whether the case was done properly.

Bench trial or court trial: A trial heard only by a judge. There is no jury present.

Burden of proof (BOP): The responsibility of proving something.

Civil commitment: The voluntary or involuntary commitment of a person to a mental health facility for care, treatment, and/or control.

Commitment Defense Unit (CDU): The division of the Missouri State Public Defender's office that handles sexually violent predator cases.

Clear and convincing evidence (CCE): The degree of proof needed for a judge or jury to find that a sex offender is a sexually violent predator. Also the degree of proof needed for a judge to find that a sexually violent predator should not be conditionally released.

Conditional release (CR): The release of a sexually violent predator to the community under a set of conditions set by the Department of Mental Health, the Department of Corrections, and the judge.

Continuance: The postponement of a court hearing. A case can be continued for many reasons including, but not limited to: time needed for either party to prepare the case, conflicts in a witness, lawyer, or judge's schedules, weather, or illness.

Deposition (depo): The sworn testimony of a witness taken outside of court, in the presence of both parties' attorneys. A deposition can be used at trial to show how a witness's statements have changed or, if the witness is unavailable, can be read instead of presenting live trial testimony.

Habeas corpus: A legal proceeding where a sex offender in custody claims that he or she is improperly detained.

Hearing: A legal proceeding in which a court hears arguments, witnesses, and evidence.

Jail: A city or county correctional facility where a sex offender is held after a judge finds probable cause to proceed to trial.

Judge or the Court: An officer of the court who makes decisions in a judicial capacity. The judge generally decides questions of law. In bench trials, he or she also decides questions of fact.

Jury: A group of twelve people from the county in which a trial is held who are selected by both parties' attorneys to hear a case. The jury generally decides questions of fact.

Mental abnormality (MA): A mental condition from which a respondent must suffer to be committed as a sexually violent predator. The respondent must have a condition that he was either born with or developed, that affects his emotions or behavior, and which makes it likely that he will commit sex offenses to a degree that causes him serious difficulty controlling his behavior.

Mistrial: When something went wrong during the trial that makes it impossible to continue.

Multidisciplinary team (MDT): A committee of representatives from the Department of Corrections and the

Department of Mental Health that provides information to the Attorney General's Office about whether it believes a sex offender is a sexually violent predator.

Party: The person or group of people on each side of a case.

Petition: The document filed by a party that makes a claim that a court needs to decide, thereby beginning a case.

Petitioner: The party that filed the petition that started the case.

Preponderance of the evidence (POE): The degree of proof needed for a judge to find that a sexually violent predator can have a trial about whether he should be conditionally released. Also the degree of proof needed for a judge to revoke a sexually violent predator's conditional release.

Probable cause (PC): The degree of proof needed for a judge to take a sex offender into custody and to take the case to trial.

Probable cause hearing (PC hearing): A hearing to determine whether the State has the right person in custody and has cited enough evidence to take the case to trial.

Pro se: A Latin term meaning "to defend oneself." The respondent is not represented by a lawyer.

Prosecutors' Review Committee (PRC): A committee of state prosecutors that provides information to the Attorney General's Office about whether it believes a sex offender is a sexually violent predator.

Public defender: A lawyer employed by the government to represent respondents who cannot afford to hire a lawyer.

Respondent: A sex offender that the State has determined meets the criteria to be a sexually violent predator. He responds to the petition filed by the State.

Respondent's attorney or defense attorney: The lawyer who represents the respondent.

Risk level: The level of risk that a respondent must present to be committed as a sexually violent predator. The respondent's mental abnormality must make him more likely than not to commit predatory acts of sexual violence if not confined in a secure facility.

Sex Offender Rehabilitation and Treatment Services (SORTS): The division of the Department of Mental Health that treats committed sexually violent predators. It has two locations: the Hoctor-Blair Complex at the State of Missouri Campus (Farmington) and the SORTS wing of Fulton State Hospital (Fulton).

Sexually violent offense (SVO): The crime that a respondent must have been found guilty of to be committed as a sexually violent predator. They include: the felonies of rape in the first degree, forcible rape, rape, statutory rape in the first degree, sodomy 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, second, third, or fourth degree, sexual abuse, sexual abuse in the first degree, rape in the second degree, sexual assault, sexual assault in the first degree, sodomy in the second degree, deviate sexual assault, deviate sexual assault in the first degree, or the act of abuse of a child involving either sexual contact, a prohibited sexual act, sexual abuse, or sexual exploitation of a minor, or any felony offense that contains elements substantially similar to the offenses listed above.

Sexually violent predator (SVP): A sex offender that has been found guilty of a sexually violent offense, suffers from a mental abnormality, and presents a level of risk to the community.

Sexually Violent Predator Act (SVPA): The law that allows the involuntary civil commitment of certain sex offenders. It was enacted in 1999 and can be found in sections 632.480–632.513 of the Missouri Revised Statutes.

Subpoena: A court order requiring a person to appear in court or for a deposition, on a certain day and time, to give testimony or to produce records.

Voir dire or jury selection: The procedure in which both parties' attorneys question prospective jurors to pick a jury.

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