

# Protecting Future Victims: Missouri's Sexually Violent Predator Act

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## What Are We Talking About Today?

- 1) What is Missouri's Sexually Violent Predator Act and where did it come from?
- 2) How does the Act work?
- 3) How can I help?

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## What is a Sexually Violent Predator (SVP)?

It is *not* just a multi-victim sex offender

It *is* a legal term of art defined by §632.480, RSMo describing offenders who:

- Have a finding of guilt for a certain type of sex offense, and
- Suffer from a certain type of mental illness that motivates them to commit certain types of sex offenses, and
- Are more likely than not to commit certain types of sex offenses if not confined

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## What is the Sexually Violent Predator Act?

- Missouri law that provides for involuntary civil commitment of sex offenders
  - §632.480-632.513, RSMo (Sexually Violent Predator Act)(1999)
  - Offenders referred to the AGO at end of their prison term or upon evidence of an overt act in the community
  - Petitions filed by Missouri Attorney General's Office
  - Special statutory proceedings utilizing both criminal and civil procedure
  - If successful on the petition, action results in Department of Mental Health taking custody for care, control, and treatment

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## Missouri's SVP Law

*"I'm scared to death to go out on the street because I know what will happen when I see a child. There's nothing a parent can do with any of us."*

\*Kevin Haenchen

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## Missouri's SVP Law

- Kevin Haenchen arrested for molesting 19 children, admitted he had been molesting children for 3 years
- On probation, molested a 2yo old child he was babysitting
- In prison, kept a diary of victims and admitted to molesting 28 children, most at a day care and camp where he volunteered
- Refused treatment, said his urges for children only got worse in prison
- At 1998 parole hearing, stated *he would molest again and kill the children to humiliate state officials for releasing him*

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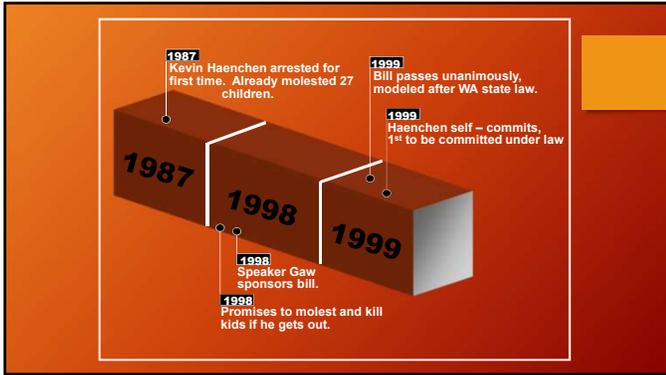
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### Missouri's SVP Law

*I'm safe from people and they're safe from me.*

-Kevin Haenchen

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### How Many States Have SVP/SDP Laws?

As of 2018, 20 states, the District of Columbia, and the United States

Arizona	Wisconsin
California	New York
Washington	Pennsylvania
North Dakota	Massachusetts
Minnesota	New Jersey
Iowa	New Hampshire
Nebraska	Florida
Kansas	Texas
Missouri	Virginia
Illinois	South Carolina

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### Is This Constitutional?

Yes.

- *Kansas v. Hendricks*, 521 U.S. 346 (1997)
- *Kansas v. Crane*, 534 U.S. 407 (2002)
- *Karsjens v. Piper*, 845 F.3d 394 (8th Cir. 2017)
- *Kirk v. State*, 520 S.W.3d 443 (Mo. 2017)
- *Nelson v. State*, 521 S.W.3d 229 (Mo. 2017)

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### How Many People Does it Affect in Missouri?

- 3-5% of male sex offenders leaving the Department of Corrections
- 10 offenders leaving the Department of Mental Health
- 9 "overt act" offenders

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graph LR; A[Active Cases: 29] --> B[Currently Committed: 263]; B --> C[Conditionally Released: 7]
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### Where Are They?

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graph LR; A[Pretrial  
• Ste. Genevieve County Jail  
• Vernon County Jail] --> B[Post-trial  
Sex Offender Rehabilitation  
and Treatment Services  
(SORTS)  
• Hector-Blair Complex at State of  
Missouri campus (Farmingington)  
• SORTS wing of Fulton State Hospital]
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### Who Works on These Cases in Missouri?

Attorney General's Office	Public Defender's Office
Katharine Dolin-Director	Amy Clay-District Defender*
Ted Bruce-AAG	Sam Lawrence-APP*
Greg Goodwin-AAG	Hannah Vellinge-APP*
Jennifer Szczucinski-AAG	Jeff Stephens-APP*
Paige Wheeler-AAG	Jo Krehmeyer-Legal Assistant*
Jennifer Coffin-AAG	
Mike Hayes-AAG	Private Counsel
George Lankford-AAG	Eric Selig
Melissa Pierce-AAG	Joseph Whitener
Tristin Estep-AAG	
Mik Ebert-AAG	
Carla Ramshead-Investigator*	
Rebecca Sullivan-Paralegal*	
Carrie Boessen-Victim Advocate	
Melissa Koetting-Victim Advocate	
Jocelyn Boehlje-Victim Advocate	

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### What is Missouri's Sexually Violent Predator Act?

- What the heck is a sexually violent predator?
- History lesson
- Cases in a snapshot

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### Questions?

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### How Does the Act Work?

- ◊ The 3 basic elements
- ◊ The two ways we get referrals

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### These Proceedings in a Snapshot

Initiated by AGO	Filed in a county where offender has a sexually violent offense finding of guilt	Criminal/civil hybrid
Expedited timelines	If jury, unanimous verdict	Either party or court may demand a jury trial
Burden of Proof on AGO-clear and convincing evidence	May use hearsay through expert and discuss allegations not resulting in conviction	No presumption of "innocence"

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### Elements

Past **Sexually Violent Offense**  
 +  
 Present **Mental Abnormality**  
 +  
 Future **More Likely Than Not** to engage in predatory acts of sexual violence if not confined to a secure facility  
 =  
**Sexually Violent Predator**

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### Sexually Violent Offense-§632.480, RSMo

The felonies of:

- |  |   |
|--|---|
| First-degree rape or attempt             | First-degree sexual abuse   |
| Forcible rape or attempt                 | Second-degree rape  |
| Rape or attempt                          | Sexual assault  |
| First-degree statutory rape or attempt   | First-degree sexual assault   |
| First-degree sodomy or attempt           | Second-degree sodomy  |
| Forcible sodomy or attempt               | Deviate sexual assault  |
| Sodomy or attempt                        | First-degree deviate sexual assault   |
| First-degree statutory sodomy or attempt | Act of abuse of a child involving sexual contact  |
| First-degree child molestation           | Act of abuse of a child involving a prohibited sexual act                                       |
| Second-degree child molestation          | Act of abuse of a child involving sexual abuse  |
| Third-degree child molestation           | Act of abuse of a child involving sexual exploitation of a minor                                |
| Fourth-degree child molestation          | or any felony offense that contains elements substantially similar to the offenses listed above |
| Sexual abuse                             |   |

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### Substantially Similar

- AGO alleges the SVP's conviction is substantially similar to one or more of the listed sexually violent offenses
- Been analyzed twice in context of [out-of-state convictions](#)
  - Elemental Analysis
    - Doesn't matter if other offenses AGO did not allege are a better fit
    - Doesn't matter if each offense covers conduct other doesn't
    - Doesn't matter if range of punishment is different for each offense
- Open question as to [Missouri offenses](#)

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### Mental Abnormality-§632.480, RSMo supplemented by *Thomas v. State, 74 S.W.3d 789 (Mo. 2002)*

A congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree that causes the individual serious difficulty in controlling his behavior.

- Common conditions: [pedophilic disorder](#), [sexual sadism disorder](#), [other specified paraphilic disorder \(specifiers for nonconsent, hypersexuality, hebephilia\)](#), [antisocial personality disorder](#)

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### Risk Level-§632.480, RSMo

Mental abnormality makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility

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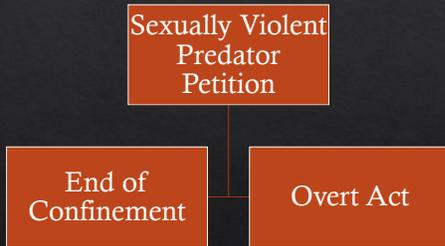
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### Ways to Initiate a Case



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### End of Confinement-§632.483, RSMo

DOC/DMH screens sex offenders:

- within 360 days of release date for regular prison terms or as soon as they are received for a 180-day program on a post-release supervision revocation
- at any time before the release of a person who was found NGRI
- at any time before the release of a criminal sexual psychopath

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### Overt Act-§632.484, RSMo

**SVP not in physical custody of DOC/DMH**

- Any law enforcement agency has evidence of "recent overt act"=any act that creates a reasonable apprehension of harm of a sexually violent nature

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### Records

- ◇ During the process, AGO gathers records from:
  - ◇ law enforcement
  - ◇ circuit court
  - ◇ prosecuting attorney
  - ◇ military
  - ◇ juvenile justice
  - ◇ mental health
  - ◇ probation and parole
  - ◇ department of corrections
  - ◇ pretrial detention

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### How Does the Act Work?

- ◇ The 3 basic elements
- ◇ The two ways we get referrals

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### Questions?

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### How Can I Help?

- Refer overt acts!
- Arrest/charge/convict appropriately, but with an eye towards future implications of choices
- Keep us in mind for possible SVPs in the DOC/DMH pipeline

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### Overt Act

Talk to everyone you know!

"Recent overt act" = any act that creates a reasonable apprehension of harm of a sexually violent nature



Has a finding of guilty/NGRI for 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

Call the AGO. If we feel it is meritorious we will ask you to get us conviction record, description of overt act, and anything else you think is important ASAP!

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### Examples of Overt Acts

- ▶ "Recent" = average of 5 months, ranged from 6 days to 18 months

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### Examples of Overt Acts

- ▶ "Overt Act" = 9 since 1999
  - ▶ 3 new charges (Forcible Rape, Sodomy, Child Molestation, Stat Sod, Stat Rape, Sexual Abuse)
  - ▶ 2 new arrests (Stalking, Forcible Rape)
  - ▶ 4 concerning behavior
    - ▶ Downloading porn while parked in front of school, taking pictures of girls outside stores, admitting going to schools to watch kids
    - ▶ Leaving dirty diapers and torn up girls' clothing in a playground, putting child porn on phone, having backpack full of lube, condoms, knives, and children's trading cards
    - ▶ Harassing, stalking, unwanted groping and kissing
    - ▶ Admitting to going to public places to watch children, exposing himself and making advances toward mentally-challenged person

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### Criminal History is Important-Maybe the Most Important

- ▶ Establishes patterns in and severity of offending
- ▶ Informs diagnoses
- ▶ Informs risk assessments
- ▶ Gives DMH idea of amenability to treatment/treatment needs

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## Document Facts

- ▶ Make sure arrests are in MULES
- ▶ Interview offender
- ▶ Interview victim (CAC where available), family, witnesses
- ▶ We generally don't have or utilize multimedia but:
  - ▶ Find and keep any recordings of offenses (duh, but interview room example)
  - ▶ Keep recordings of interviews that are not transcribed or accurately summarized
  - ▶ The more documentation the better!

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## How the Science Works

▶ There are "actuarials" or risk assessments that we use

Scoring Item	What You Can Do
Whether there was a conviction for non-sexual violence at time of sexually violent offense	Arrest/charge/convict for violent acts that occur at same time as sex offense
Whether there were any previous convictions for non-sexual violence	Arrest/charge/convict violent acts, no matter how small. You may not know who you are dealing with yet
Convictions for non-contact sex offenses	Arrest/charge/convict child porn, exposure, voyeurism, solicitation
Charges (or arrests) for prior sexual offenses	Arrest/charge/convict sex offenses as they arise
Prior sentencing dates	Avoid grouping unrelated cases together at sentencing
Male victims	Consider possibility of male victims, less likely that they will come forward or offender will admit
Stranger/related victims	Document relationship of victim to offender

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## Document Choices

- ▶ Avoid declining or pleading someone out of the purview of the statute if the facts support the charge
- ▶ If you or prosecutor does not move forward or move forward on lesser offense, would be useful to have some indication of that reasoning in the record
- ▶ In absence of information, defense will say offense did not occur or no one believed victim
- ▶ If those things are not true, consider documenting choices

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### Victim Information

- ▶ AGO under legal obligation to notify all victims of any sexually violent offense-does not have to be charged or convicted
- ▶ Keep complete and up-to-date information for your victims in your file (next of kin if minors) including full names, gender, DOB, SSN, and as many telephones and addresses as you can
- ▶ We will update later but the more information we have the better

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### Make AGO Aware of Someone in DOC/DMH Pipeline

- ▶ Someone with a **qualifying offense** in their history that also:
  - ▶ Seems to have some mental problem that compels behavior
  - ▶ Has recidivated
  - ▶ Makes concerning statements about their mental health/sexual interest/risk levels

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### Contact Information

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## How Can I Help?

- Refer overt acts
- Arrest/Charge/Convict appropriately, but with an eye towards future implications of prosecutorial choices
- Keep us in mind

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## Questions?

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