

FIRST REGULAR SESSION

SENATE BILL NO. 363

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 28, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1670S.011

AN ACT

To repeal sections 221.105, 559.100, 566.067, 595.036, 595.037, and 595.060, RSMo, and to enact in lieu thereof ten new sections relating to crime, with penalty provisions.

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

Section A. Sections 221.105, 559.100, 566.067, 595.036, 595.037, and
2 595.060, RSMo, are repealed and ten new sections enacted in lieu thereof, to be
3 known as sections 217.023, 217.1000, 221.105, 559.015, 559.100, 566.067,
4 595.036, 595.037, 595.060, and 621.275, to read as follows:

217.023. 1. (1) Notwithstanding any other provision of law to the
2 contrary, the department of corrections shall not accept for
3 commitment to a prison operated by the department any offender who
4 pleads guilty to or is found guilty of a class D felony unless such person
5 has been found to have at least two prior pleas or findings of guilt for
6 any felony in this state or any other state, federal, tribal, or military
7 offense that, if committed in this state, would be a felony. Nor shall the
8 department accept for commitment any offender who pleads guilty to
9 or is found guilty of a class C felony under the following sections:

- 10 (a) Possession of a controlled substance under section 195.202;
11 (b) Keeping or maintaining a public nuisance under section
12 195.130;
13 (c) Creation of a controlled substance under section 195.420;
14 (d) Tampering in the first degree under section 569.080;
15 (e) Receiving stolen property when it is a class C felony under
16 subsection 3 of section 570.080;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- 17 **(f) Stealing under subsection 3 or 4 of section 570.030;**
18 **(g) Forgery under section 570.090;**
19 **(h) Passing no account or no drawee check or checks in the**
20 **amount of at least five hundred dollars under subdivisions (1) or (2) of**
21 **subsection 4 of section 570.120;**
22 **(i) Check kiting under section 570.220;**
23 **(j) Identity theft exceeding five hundred dollars but not**
24 **exceeding five thousand dollars under subdivision (3) of subsection 3**
25 **of section 570.223;**
26 **(k) Failure to return leased or rented property of a value of five**
27 **hundred dollars or more under section 578.150;**
28 **unless such person has been found to have at least one prior plea or**
29 **finding of guilt of any felony in this state or any other state, federal,**
30 **tribal, or military offense that, if committed in this state, would be a**
31 **felony.**
- 32 **(2) Any such offender may be:**
33 **(a) Directed, with the agreement of the parties and the approval**
34 **of the court, to participate in a drug court, DWI court, or any other**
35 **treatment court approved by the drug courts coordinating commission;**
36 **(b) Sentenced to county jail; or**
37 **(c) Placed upon probation.**
- 38 **2. For the purpose of calculating the savings to the state that**
39 **result from the implementation of the provisions of this section, the**
40 **department of corrections shall calculate a state baseline number**
41 **consisting of the average of the numbers of persons in the department**
42 **of corrections on the last day of each month in fiscal year 2010 who are**
43 **committed to the department solely for class D felonies and class C**
44 **felonies as enumerated under subsection 1 of this section. The**
45 **department shall also calculate a baseline number for each county. The**
46 **baseline number for each county shall be the average end of month**
47 **population of persons during fiscal year 2010 committed from the**
48 **county to the department solely for class D felonies and class C felonies**
49 **as enumerated under subsection 1 of this section. The department shall**
50 **include all offenders in the department's prisons in its calculations,**
51 **including offenders sentenced under section 217.362 and 559.115.**
- 52 **3. The department of corrections shall calculate the savings to**
53 **the state each quarter by subtracting the average daily population of**

54 offenders housed in prison for class D felonies and class C felonies as
55 enumerated under subsection 1 of this section during the quarter from
56 the state baseline number determined in accordance with subsection 2
57 of this section. The quarterly savings to the state shall be determined
58 by multiplying the operational costs per offender by the difference
59 between the state baseline number and average daily population for the
60 quarter and then subtracting from that number the cost of probation
61 and parole and the cost of drug, DWI, or other treatment courts for the
62 diverted offenders. If the population of offenders in prison for class D
63 felonies and class C felonies as enumerated under subsection 1 of this
64 section increases in any quarter, no calculations will be required by
65 this subsection.

66 4. The savings calculated in accordance with subsection 3 of this
67 section shall be distributed in accordance with this subsection. One-
68 half shall revert to the general revenue fund of the state. Subject to
69 appropriations, one-sixth shall be retained by the department of
70 corrections for any costs associated with community supervision, one-
71 sixth shall be distributed to the circuit courts, and one-sixth shall be
72 distributed to the county corrections stabilization fund established
73 under subsection 5 of this section. The county corrections stabilization
74 fund shall receive the first two million dollars of savings toward its
75 one-sixth share prior to any other distribution.

76 5. There is hereby created in the state treasury the "County
77 Corrections Stabilization Fund". The state treasurer shall be custodian
78 of the fund and may approve disbursements from the fund in
79 accordance with sections 30.170 and 30.180. Money in the fund shall be
80 used by the counties to fund the housing, by the county, of inmates who
81 are serving sentences on class D felonies and class C felonies as
82 enumerated under subsection 1 of this section. The department of
83 corrections shall administer the fund and disburse the money to
84 reimburse the actual costs of incarceration up to one hundred eighty
85 days per individual offender incurred under subdivision (3) or (4) of
86 subsection 3 of section 221.105 to each county that has reduced the
87 number of offenders serving sentences in the department of corrections
88 below the county baseline number calculated under subsection 2 of this
89 section for class D felonies and class C felonies as enumerated under
90 subsection 1 of this section. If insufficient moneys are available, the

91 department shall pay each county that has reduced the number of
92 persons serving sentences in the department on class D felonies and
93 class C felonies as enumerated under subsection 1 of this section a pro
94 rata share of the amount available in the fund. Notwithstanding the
95 provisions of section 33.080 to the contrary, any moneys remaining in
96 the fund at the end of the biennium shall not revert to the credit of the
97 general revenue fund. The state treasurer shall invest moneys in the
98 fund in the same manner as other funds are invested. Any interest and
99 moneys earned on such investments shall be credited to the fund.

100 6. The department of corrections shall provide the prosecuting
101 or circuit attorney, on a monthly basis, with a list of persons
102 incarcerated in the department of corrections for offenses from such
103 county, including the risk assessment and parole release guidelines
104 utilized by the board of probation and parole for each individual, the
105 list of offenses of which the individual was found guilty of or pleaded
106 guilty to, and the person's conditional and board release date.

107 7. The provisions of this section shall expire August 28, 2014,
108 except that the savings resulting from implementation of this section
109 during the year ending on August 28, 2014, shall be calculated and
110 distributed as provided under subsection 4 of this section after such
111 date.

217.1000. 1. There is hereby created the "Criminal Justice
2 Review Commission" whose purpose shall be to study the effects of
3 sections 217.023, 221.105, 558.011, and 559.015, and to make
4 recommendations regarding any proposed changes to those and similar
5 sections prior to August 28, 2014. The commission shall make annual
6 reports no later than November first of each year to the governor, the
7 speaker of the house, and the president pro tem of the senate. Members
8 of the commission shall include the following: one member of the senate
9 to be appointed by the president pro tem; one member of the house of
10 representatives to be appointed by the speaker of the house; two judges
11 named by the chief justice of the supreme court; the executive director
12 of the office of prosecution services or his or her designee; one
13 prosecuting attorney or circuit attorney to be named by the executive
14 director of the office of prosecution services; a member to be named by
15 the public defender commission; a member to be named by the
16 sentencing advisory commission; the director of the department of

17 **corrections or his or her designee; the director of the department of**
18 **public safety or his or her designee; and the following individuals to be**
19 **named by the governor: a county sheriff, a practicing criminal defense**
20 **attorney, and a representative of a crime victims' rights organization.**

21 **2. The provisions of this section shall expire on August 28, 2014.**

221.105. 1. The governing body of any county and of any city not within
2 a county shall fix the amount to be expended for the cost of incarceration of
3 prisoners confined in jails or medium security institutions **or electronic**
4 **monitoring of offenders supervised by the counties under subdivision**
5 **(1), (2), or (3) of subsection 3 of this section excluding instances when**
6 **the prisoner is found guilty of or pleads guilty to a state offense for**
7 **which he or she is sentenced to a term of imprisonment in the**
8 **department of corrections but receives credit for the time he or she**
9 **served in the county jail prior to the sentencing for such offense. [The**
10 **per diem cost of incarceration of these prisoners chargeable by the law to the**
11 **state shall be determined, subject to the review and approval of the department**
12 **of corrections.]**

13 2. When the final determination of any criminal prosecution shall be such
14 as to render the state liable for costs under existing laws, it shall be the duty of
15 the sheriff to certify to the clerk of the circuit court [or court of common pleas]
16 in which the case was determined the total number of days any prisoner who was
17 a party in such case remained in the county jail **or was subject to electronic**
18 **monitoring**. It shall be the duty of the county commission to supply the cost per
19 diem for county prisons **or electronic monitoring** to the clerk of the circuit
20 court on the first day of each year[,] and thereafter whenever the amount may be
21 changed. It shall then be the duty of the clerk of the court in which the case was
22 determined to include in the bill of cost against the state all fees [which] **that** are
23 properly chargeable to the state. In any city not within a county it shall be the
24 duty of the superintendent of any facility boarding prisoners **or supervising**
25 **electronic monitoring** to certify to the chief executive officer of such city not
26 within a county the total number of days any prisoner who was a party in such
27 case remained in such facility **or was subject to electronic monitoring**. It
28 shall be the duty of the superintendents of such facilities to supply the cost per
29 diem to the chief executive officer on the first day of each year[,] and thereafter
30 whenever the amount may be changed. It shall be the duty of the chief executive
31 officer to bill the state all fees for boarding **or electronic monitoring** such

32 prisoners [which] **that** are properly chargeable to the state. The chief executive
33 may by notification to the department of corrections delegate such responsibility
34 to another duly sworn official of such city not within a county. The clerk of the
35 court of any city not within a county shall not include such fees in the bill of costs
36 chargeable to the state. The department of corrections shall revise its criminal
37 cost manual in accordance with this provision.

38 3. The actual costs chargeable to the state, including those incurred for
39 a prisoner who is incarcerated in the county jail, **regardless of whether or not**
40 **a warrant has been issued, or electronically monitored by the county**
41 **under subdivisions (1), (2), or (3) of this subsection excluding instances**
42 **when the prisoner is found guilty of or pleads guilty to a state offense**
43 **for which he or she is sentenced to a term of imprisonment in the**
44 **department of corrections but receives credit for the time he or she**
45 **served in the county jail prior to the sentencing for such offense,**
46 because:

47 (1) The prisoner's parole or probation has been revoked or because the
48 prisoner has, or allegedly has, violated any condition of the prisoner's parole or
49 probation, and such parole or probation is a consequence of a violation of a state
50 statute[, or];

51 (2) The prisoner is a fugitive from the Missouri department of corrections
52 [or];

53 (3) **The prisoner is** otherwise held at the request of the Missouri
54 department of corrections [regardless of whether or not a warrant has been
55 issued], **including instances when the prisoner is found guilty of or**
56 **pleads guilty to a state offense for which he or she is sentenced to a**
57 **term of imprisonment in the department of corrections but receives**
58 **credit for the time he or she served in the county jail prior to the**
59 **sentencing for such offense; or**

60 (4) **The prisoner is held in a county jail for a state offense on a**
61 **sentence or portion of a sentence following a plea or finding of guilt or**
62 **is incarcerated under section 559.026;**

63 shall be the actual cost of incarceration not to exceed[:

64 (1) Until July 1, 1996, seventeen dollars per day per prisoner;

65 (2) On and after July 1, 1996, twenty dollars per day per prisoner;

66 (3) On and after July 1, 1997, up to] thirty-seven dollars and fifty cents
67 per day per prisoner **for incarcerating prisoners confined in jails or**

68 **medium security institutions and not to exceed eight dollars per day**
69 **per prisoner for electronic monitoring supervised by the county**, subject
70 to appropriations, but not less than the amount appropriated in the previous
71 fiscal year. **A county shall be reimbursed for the actual cost of**
72 **incarceration incurred under subdivision (3) or (4) of this subsection**
73 **only from the county corrections stabilization fund established under**
74 **section 217.023 when there are available moneys in such fund and the**
75 **county has reduced the number of persons in the department of**
76 **corrections below the county baseline number of subsection 2 of section**
77 **217.023 for class D felonies and class C felonies as enumerated under**
78 **subsection 1 of section 217.023.**

559.015. 1. **The board of probation and parole may select**
2 **nonviolent offenders for release upon their admission to a drug, DWI,**
3 **or any other treatment court approved by the drug courts coordinating**
4 **commission with the consent of the prosecuting attorney or circuit**
5 **attorney and upon agreement of the drug court judge. Any such**
6 **offender shall thereafter be subject to the jurisdiction of the court as**
7 **if on original probation.**

8 **2. The provisions of this section shall expire August 28, 2014.**

559.100. 1. The circuit courts of this state shall have power, herein
2 provided, to place on probation or to parole persons convicted of any offense over
3 which they have jurisdiction, except as otherwise provided in sections 195.275 to
4 195.296, section 558.018, section 559.115, section 565.020, sections 566.030,
5 566.060, 566.067, 566.151, and 566.213, section 571.015, and subsection 3 of
6 section 589.425.

7 **2. The circuit court shall have the power to revoke the probation or parole**
8 **previously granted and commit the person to the department of corrections. The**
9 **circuit court shall determine any conditions of probation or parole for the**
10 **defendant that it deems necessary to ensure the successful completion of the**
11 **probation or parole term, including the extension of any term of supervision for**
12 **any person while on probation or parole. The circuit court may require that the**
13 **defendant pay restitution for his crime. The probation or parole may be revoked**
14 **for failure to pay restitution or for failure to conform his behavior to the**
15 **conditions imposed by the circuit court. The circuit court may, in its discretion,**
16 **credit any period of probation or parole as time served on a sentence.**

17 **3. Notwithstanding any other provision of law to the contrary,**

18 **the circuit court shall retain jurisdiction over any person sentenced to**
19 **a term of confinement in a county jail for the duration of the sentence**
20 **or the term of probation granted under law.**

566.067. 1. A person commits the crime of child molestation in the first
2 degree if he or she subjects another person who is less than fourteen years of age
3 to sexual contact.

4 2. Child molestation in the first degree is a class B felony unless:

5 (1) The actor has previously **pleaded guilty to or been [convicted]**
6 **found guilty** of an offense under this chapter, **or has pleaded guilty to or**
7 **been found guilty of an offense in another jurisdiction that would**
8 **constitute an offense under this chapter**, or in the course thereof the actor
9 inflicts serious physical injury, displays a deadly weapon or deadly instrument
10 in a threatening manner, or the offense is committed as part of a ritual or
11 ceremony, in which case the crime is a class A felony; or

12 (2) The victim is a child less than twelve years of age and:

13 (a) The actor has previously been convicted of an offense under this
14 chapter; or

15 (b) In the course thereof the actor inflicts serious physical injury, displays
16 a deadly weapon or deadly instrument in a threatening manner, or if the offense
17 is committed as part of a ritual or ceremony, in which case, the crime is a class
18 A felony and such person shall serve his or her term of imprisonment without
19 eligibility for probation or parole.

595.036. 1. **For any claim filed on or after August 28, 2011**, any
2 party aggrieved by a decision of the department **of public safety** on a claim
3 under the provisions of sections 595.010 to [595.070] **595.075** may, within thirty
4 days following the date of notification [of mailing] of such decision, file a petition
5 with the [division of workers' compensation of the] department [of labor and
6 industrial relations] to have such decision heard de novo by [an administrative
7 law judge] **the director**. The [administrative law judge] **director** may affirm[,]
8 **or reverse**[, or set aside] the **department's** decision [of the department of public
9 safety] on the basis of the evidence previously submitted in such case or may take
10 additional evidence [or may remand the matter to the department of public safety
11 with directions]. The [division of workers' compensation] **department** shall
12 promptly notify the [parties] **party** of its decision and the reasons therefor.

13 2. Any [of the parties to a] **party aggrieved by the director's** decision
14 [of an administrative law judge of the division of workers' compensation, as

15 provided by subsection 1 of this section, on a claim heard under the provisions of
16 sections 595.010 to 595.070] may, within thirty days following the date of
17 notification [or mailing] of such decision, file a petition with the [labor and
18 industrial relations] **administrative hearing** commission to [have] **appeal**
19 such decision [reviewed by the commission] **as provided in section**
20 **621.275**. [The commission may allow or deny a petition for review. If a petition
21 is allowed, the commission may affirm, reverse, or set aside the decision of the
22 division of workers' compensation on the basis of the evidence previously
23 submitted in such case or may take additional evidence or may remand the
24 matter to the division of workers' compensation with directions. The commission
25 shall promptly notify the parties of its decision and the reasons therefor.

26 3. Any petition for review filed pursuant to subsection 1 of this section
27 shall be deemed to be filed as of the date endorsed by the United States Postal
28 Service on the envelope or container in which such petition is received.

29 4. Any party who is aggrieved by a final decision of the labor and
30 industrial relations commission pursuant to the provisions of subsections 2 and
31 3 of this section shall within thirty days from the date of the final decision appeal
32 the decision to the court of appeals. Such appeal may be taken by filing notice
33 of appeal with commission, whereupon the commission shall, under its certificate,
34 return to the court all documents and papers on file in the matter, together with
35 a transcript of the evidence, the findings and award, which shall thereupon
36 become the record of the cause. Upon appeal no additional evidence shall be
37 heard and, in the absence of fraud, the findings of fact made by the commission
38 within its powers shall be conclusive and binding. The court, on appeal, shall
39 review only questions of law and may modify, reverse, remand for rehearing, or
40 set aside the award upon any of the following grounds and no other:

- 41 (1) That the commission acted without or in excess of its powers;
42 (2) That the award was procured by fraud;
43 (3) That the facts found by the commission do not support the award;
44 (4) That there was not sufficient competent evidence in the record to
45 warrant the making of the award.]

595.037. 1. All information submitted to the department [or division of
2 workers' compensation] and any hearing of the [division of workers'
3 compensation] **department** on a claim filed pursuant to sections 595.010 to
4 595.075 shall be open to the public except for the following claims which shall be
5 deemed closed and confidential:

6 (1) A claim in which the alleged assailant has not been brought to trial
7 and disclosure of the information or a public hearing would adversely affect either
8 the apprehension, or the trial, of the alleged assailant;

9 (2) A claim in which the offense allegedly perpetrated against the victim
10 is rape, sodomy or sexual abuse and it is determined by the department [or
11 division of workers' compensation] to be in the best interest of the victim or of the
12 victim's dependents that the information be kept confidential or that the public
13 be excluded from the hearing;

14 (3) A claim in which the victim or alleged assailant is a minor; or

15 (4) A claim in which any record or report obtained by the department [or
16 division of workers' compensation], the confidentiality of which is protected by
17 any other law, shall remain confidential subject to such law.

18 2. The department [and division of workers' compensation, by separate
19 order,] may close any record, report or hearing if it determines that the interest
20 of justice would be frustrated rather than furthered if such record or report was
21 disclosed or if the hearing was open to the public.

595.060. The director shall promulgate rules and regulations necessary
2 to implement the provisions of sections 595.010 to 595.220 as provided in this
3 section and chapter 536. [In the performance of its functions under section
4 595.036, the division of workers' compensation is authorized to promulgate rules
5 pursuant to chapter 536 prescribing the procedures to be followed in the
6 proceedings under section 595.036.] Any rule or portion of a rule, as that term
7 is defined in section 536.010, that is created under the authority delegated in this
8 section shall become effective only if it complies with and is subject to all of the
9 provisions of chapter 536 and, if applicable, section 536.028. This section and
10 chapter 536 are nonseverable and if any of the powers vested with the general
11 assembly pursuant to chapter 536 to review, to delay the effective date, or to
12 disapprove and annul a rule are subsequently held unconstitutional, then the
13 grant of rulemaking authority and any rule proposed or adopted after August 28,
14 2009, shall be invalid and void.

**621.275. 1. Any person shall have the right to appeal to the
2 administrative hearing commission from any decision made by the
3 director of the department of public safety under section 595.036
4 regarding that person's claim for compensation as provided in sections
5 595.010 to 595.075.**

2. Any person filing an appeal with the administrative hearing

7 commission shall be entitled to a hearing before the commission. The
8 person shall file a petition with the commission within thirty days after
9 the decision of the director of the department of public safety is sent
10 in the United States mail or within thirty days after the decision is
11 delivered, whichever is earlier. The director's decision shall contain
12 a notice of the person's right to appeal:

13 "If you were adversely affected by this decision, you may
14 appeal to the administrative hearing commission. To
15 appeal, you must file a petition with the administrative
16 hearing commission within thirty days after the date this
17 decision was delivered or sent in the United States mail,
18 whichever is earlier. If your petition is sent by registered
19 or certified mail, it will be deemed filed on the date it is
20 mailed; if it is sent by any method other than registered or
21 certified mail, it will be deemed filed on the date it is
22 received by the commission."

23 3. Decisions of the administrative hearing commission under this
24 section shall be binding, subject to appeal by either party. The
25 procedures established by chapter 536 shall apply to any hearings and
26 determinations under this section.

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